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MILITARY LAW

MADE EASY

WITH APPENDICES OF THE

EXAMINATION PAPERS FULLY ANSWERED,

WITH REFERENCES TO THE OFFICIAL BOOKS.

BY

LIEUT.-COLONEL S. T. BANNING,

Late Royal Munster Fusiliers,

p.s.c.; LL.B. (Lond.); B.A., LL.D. (R.U.I.);
of the Middle Temple, Barrister-at-Law;
D.A.A. & Q.M.G., Mauritius;
late Instructor in Military Law, R.M.C.

FOURTH EDITION.

REVISED BY THE AUTHOR WITH THE ASSISTANCE OF

CAPTAIN R. F. LEGGE,

Leinster Regiment.

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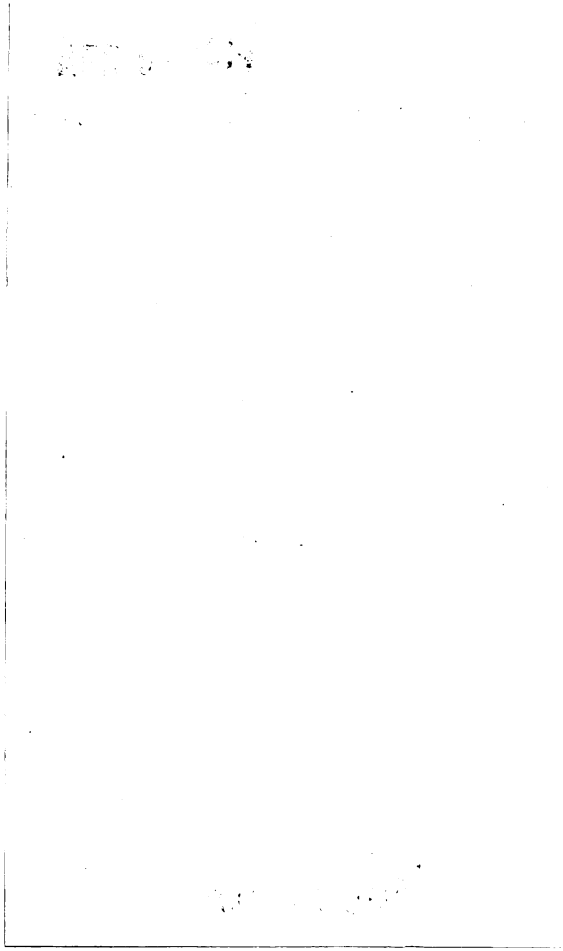
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"The name of the compiler is of itself sufficient to commend it to the favourable attention of the military student or candidate for promotion. Major BANNING, besides being the author of several well appreciated and instructive military educational treatises, is specially fitted for the task he has undertaken in the present volume. He holds the degrees of LL.B. (Lond.) and LL.D., is a barrister-at-law of the Middle Temple, and an Instructor in Military Law at the Royal Military College, Sandhurst. . . . The contents fully justify the title of the handbook, 'MILITARY LAW MADE EASY,' a subject to which Major BANNING has brought the experience of over ten years as an instructor."—*Broad Arrow.*

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AUTHOR OF

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CAPTAIN R. F. LEGGE,
Leinster Regiment.

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PREFACE TO THE FIRST EDITION.

The publication of a fresh work on Military Law appears to demand a few words of explanation, if not of apology, for its appearance, as there are so many treatises on this subject, of varying merits, already before the public. This volume is intended to form one of GALE & POLDEN'S "MILITARY SERIES," and is specially prepared to assist Officers reading for the Promotion Examination; the subject has, therefore, been dealt with entirely from that point of view and closely follows the Syllabus laid down in Queen's Regulations, Appendix VII. All Officers should consult the official books in preparing for this Examination, since it is these—"The Manual of Military Law" and the "Queen's Regulations"—which they will be allowed to use in answering the first paper; hence it becomes of vital importance that they should "know their way about" them, and be able to quickly "quote chapter and verse" for their statements. An experience of over ten years as an Instructor in Military Law has, however, convinced me that these official volumes are rather confusing to a student getting up the work, more especially if he is working alone, and, perhaps, as in the case of Officers of the Auxiliary Forces, with little previous knowledge of the subject. It is with a view, therefore, of presenting a systematic account of that portion of Military Law necessary for the Examination that this book has been written. The Papers set at the last three Examinations have been added, fully answered, with references to the official books. Students will do well to verify these references, not only to test the accuracy of the answers given, but to train themselves in the knowledge of what part of our Military Code deals with any particular point. The questions at the end of the Chapters have been taken from the Papers set at the R.M.C. from July, 1895, to December, 1900.

S.T.B.

R.M.C.
March, 1901.

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PREFACE TO THE FOURTH EDITION.

The further extensive amendments made by the Army Annual Act of last year and the passing of the Territorial and Reserve Forces Act, together with the issue of fresh Rules of Procedure and new editions of the Manual of Military Law and King's Regulations, have necessitated another careful revision of all text books on Military Law. I have therefore revised this edition so as to include all changes notified to us in this distant Command, up to date. Any further amendments necessary owing to further alterations in the Law or Regulations made while the book is in course of publication, will be duly noted for me by CAPTAIN R. F. LEGGE, Leinster Regiment, who has kindly undertaken the work of revising the book while passing through the press. Further questions taken from R.M.C. papers, 1906-7, have been added to the chapters.

MAURITIUS, S.T.B.
June, 1908.

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EDITOR'S NOTE.

Owing to the continued absence of Colonel Banning on foreign service, I have again been requested by him to see this work—the fourth edition of his well-known book on Military Law—through the Press, embodying the latest changes and amendments which might have occurred since the manuscript left Mauritius. The transfer of the Militia, Imperial Yeomanry, and Volunteers to the Territorial Forces not being finally completed, the law relating to those forces, in addition to the law relating to the Territorial Forces, has been embodied in this edition. The work is in every respect now thoroughly up to date and in accordance with the most recent text books and Army Orders.

R. F. LEGGE, *Captain,*
Adjutant, 5th Bn. L. N. Lancashire Regt.

BOLTON,
September 1st, 1908.

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A.O.	Army Orders.
Archbold	Archbold's "Pleading and Evidence in Criminal Cases"; 20th Edition by W. Bruce, 1886.
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K.R....	King's Regulations, 1908.
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R.P.	Rules of Procedure, 1907.
R.R.	Recruiting Regulations, 1907.
R.W.	Royal Warrant for Pay and Promotion, 1907.
s.	Section of Army Act, 1881.
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T.F.R.	Regulations for the Territorial Force, 1908.
T. & R.F. Act	Territorial and Reserve Forces Act, 1907.
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PART I.

LIEUTENANTS, BEFORE PROMOTION TO CAPTAIN.

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MILITARY LAW
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CHAPTER I.

INTRODUCTORY.

Military Law is the law which governs officers and soldiers in peace and in war, at home and abroad. It is contained partly in Acts of Parliament and partly in Regulations, framed under the authority of the Statute Law, as will be explained in the next Chapter. **Man, Ch. I., para. 3.**

As distinguished from the ordinary civil law it is the law relating to and administered by Military Courts, and is chiefly concerned with the trial and punishment of offences committed by officers and soldiers against its enactments. It must always be remembered that a British subject, by becoming an officer or soldier does not remove himself outside the pale of the ordinary law of the Realm, to which he remains in every way amenable, except in so far as he is specially exempted; but in addition to his ordinary liabilities as a citizen he is also governed by laws which do not affect civilians.

s. 162 (2); Man., Ch. II, para. 1; Dicey, pp. 276, 277.

The object of Military Law is to maintain discipline among the troops and those who accompany an army on active service. With this object, offences which in civil life would be punished by a small fine, *e.g.*, assault, or would be merely breaches of contract, *e.g.*, desertion or neglecting to obey orders, are in the Army dealt with as crimes and render an offender liable to heavy penalties.

Man., Ch. II., para. 2.

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But in addition to disciplinary matters, Military Law is concerned also with administrative law, as for example the law regulating recruiting and billeting. This part of Military Law affects civilians as well as soldiers, and breaches of it render them liable to be dealt with by the Civil Courts. **ss. 96—99, 102—110; Man., Ch. II., para. 1.**

Martial Law must be carefully distinguished from Military Law. The object and scope of the latter are as just defined, and its provisions are clearly laid down in the Military Code. Martial Law on the other hand is in reality no law at all and strictly speaking is not recognized by English jurisprudence. It is, however, sometimes used in two different senses, (*a*) in connection with riots and insurrections, (*b*) in connection with the government of an occupied territory by the Commander of an invading army.

In the former sense it must be understood merely to mean that military force will be used against the rioters to reduce them to subjection; but in contemplation of the law these rioters always remain subject to the ordinary law of the Realm, as do the troops employed in quelling the riot, whose rights and liabilities in the performance of this duty differ in no respect from those of ordinary citizens. This subject is dealt with more fully in Chapter XX.

Man., Ch. I., paras. 4, 17; Dicey, pp. 265—268.

In the latter sense it forms part of what are known as the "Customs of War," which are dealt with at length in Chapter XVII. By these customs, for the most part tacitly, or in some cases explicitly, agreed on between civilized nations, the Commander of an army in occupation of a foreign country governs his own troops by the Military Law of his country, while he imposes such laws and regulations on the inhabitants as he deems necessary for the security of his forces and the maintenance of good order among the population. It is in this sense that Martial Law has been described as "the will of the Commander."

Man., Ch. I., paras. 5, 6; Hall, sec. 156.

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CHAPTER II.

THE MILITARY CODE.

The code of Military Law is laid down partly in Acts of Parliament, and partly in Regulations made under the authority of those Acts or in accordance with the custom of the Service.

The chief Acts of Parliament relating to Military Law are the Army Act, 1881; the Army (Annual) Act; the Reserve Forces Act, 1882; the Militia Act, 1882; the Regimental Debts Act, 1893; the Reserve Forces and Militia Act, 1898; and the Territorial and Reserve Forces Act, 1907.

The Army Act, which was passed in 1881, embodies the contents of the old Mutiny Acts and former Enlistment Acts, and thus the greater part of the Statute Military Law has been codified. In order, however, to continue the constitutional principle of Parliamentary sanction to the maintenance of a Standing Army, it is expressly enacted in s. 2 that the Act is only to remain in force for such time as may be specified in an Annual Act bringing it into force or continuing it.

It is divided into five parts, dealing respectively with the following subjects :—

Part I. Discipline.
Part II. Enlistment.
Part III. Billeting and impressment of carriages.
Part IV. General provisions.
Part V. Application of military law, saving provisions and definitions. s. 3.

Any necessary amendments are made by the Army (Annual) Act, which is passed in the spring of each year.

The Army (Annual) Act commences with a preamble, which is practically the same as that of the former Mutiny Acts, stating the necessity for the maintenance of a Standing

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Army, and fixing the number of men to be kept up for the next twelve months (exclusive of those in India), and the necessity for trying and punishing offences against military discipline in a more exemplary and speedy manner than the ordinary law allows; s. 1 gives the short title of the Act; s. 2 continues the Army Act in force for a further twelve months, commencing from different dates in various parts of the world*; s. 3 fixes the prices to be paid for billets during the ensuing year; and other sections are added when any amendments are required in the Army Act.

The principal Regulations are :—

Rules of Procedure, made by the King, through a Secretary of State, under the authority of the Army Act, s. 70. These Rules deal with :—

(*a*) The assembly and procedure of Courts of Inquiry.
(*b*) The convening, constitution, and procedure of Courts-Martial.
(*c*) The confirmation, revision, and execution of findings and sentences of Courts-Martial.
(*d*) Making the necessary forms of orders relating to Courts-Martial.
(*e*) Any other matters necessary for carrying the Army Act into effect. **s. 70.**

Orders in Council, made by the King in Council, under the authority of various Acts of Parliament, *e.g.* :—

Order in Council of the 6th February, 1882, respecting discipline on board H.M. Ships, made under the authority of the Naval Discipline Act. **Man., p. 605.**

Orders in Council of the 10th August, 1904, defining the duties of the Members of the Army Council, and of the Inspector General of the Forces, made under the authority of 33 & 34 Vict., c. 17. **K.R., App. I.**

* (*a*). In the United Kingdom, Channel Islands, and Isle of Man from 30th April.
(*b*). Elsewhere, whether within or without the King's dominions from 31st July.

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Royal Warrants, made by the King under the Royal Sign Manual and issued by the Secretary of State; they are promulgated to the Army in Army Orders. They deal with matters of finance, and the appointment and promotion of Officers, and the conditions of retirement of Officers and men, *e.g.*, Royal Warrant for Pay.

King's Regulations, issued by the Army Council.

Army Orders, issued monthly by the Army Council, with the approval of the Secretary of State. They deal with questions of discipline, organization, training, etc.; and amendments in existing Regulations are notified in them.

It may, perhaps, be useful here to remark that the Army Act and Rules of Procedure, as bound up in the Manual of Military Law, with notes, are only so published for the convenience of Officers and others in the Army. The notes printed in smaller type after the section of the Act, or the Rule, to which they refer, have not the same authority as the Act itself or the Rules of Procedure, though, as they are issued with the official sanction of the War Office, they have, of course, great weight, and should not be lightly disregarded. In referring to the Army Act or the Rules of Procedure, the *Section* or *Rule* should be quoted, and not the page of the Manual upon which it appears. Thus :—

Army Act, s. 10; or R.P. 83 (B).

Similarly, the King's Regulations are quoted by *paragraphs*; thus, K.R., para. 460, and the Royal Warrant for Pay by *articles*, thus R.W., art. 946.

QUESTIONS.

1. Enumerate the various enactments and regulations that constitute the present Military Code, and state the authorities by whom they are respectively issued.
2. Enumerate the headings of the five parts into which the Army Act is divided. How are amendments to the Act, that may from time to time be required, brought into force?
3. Point out why it is necessary to have an Army (Annual) Act, and give a brief summary of its contents, irrespective of any particular year.

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4. Who has power to make Rules of Procedure, and whence is that power derived? Specify the principal subjects with which these rules can lawfully deal.
5. Point out how the following portions of the Military Code affect one another: The Army (Annual) Act and the Army Act; the Army Act and the Rules of Procedure; the King's Regulations and Orders for the Army and Army Orders; Army Orders and Royal Warrants.
6. Military discipline is enforced partly by *law* and partly by *regulation*. Enumerate the various constituents of the Military Code which would come under the above general headings.
7. With what subjects does the Army Act deal? How is the Act brought into operation? In what relation do the Rules of Procedure stand with reference to the Army Act?

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CHAPTER III.

PERSONS SUBJECT TO MILITARY LAW.

All persons, who are subject to Military Law, are so subject either as *Officers* or as *Soldiers*.

Again, some such persons are always subject, while others are only subject at stated times, and under certain conditions.

The following tables show the various individuals who are subject in either class :—

A. Subject Always.

(i.) *As Officers.*

Officers of the Regular Forces on the active list (includes Officers on half-pay).

Officers of the Permanent Staff of Auxiliary Forces.

Officers of the Militia.

Officers of the Special Reserve.

Officers of the Territorial Force.

*Officers of the Yeomanry.

Officers of Colonial Forces, raised at the Imperial expense (*e.g.*, Royal Malta Artillery).

s. 175 (1), (2), (3), (3A), (4) ; A. Ann. Act, 1908, s. 5 ; M. & Y. Act, 1901, s. 1.

(ii.) *As Soldiers.*

Soldiers of the Regular Forces.

Non-Commissioned Officers and men of the Permanent Staff of Auxiliary Forces.

Soldiers of Colonial Forces, as above.

s. 176 (1), (2), (3).

B. Subject at Stated Times.

(i.) *As Officers.*

Officers of the Regular Forces not on the active list employed on military duty under an Officer of the Regular Forces.

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*Officers who have not accepted commissions since the passing of the M. and Y. Act, 1901, are only subject as stated in the Army Act, s. 175 (5), (6).

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Officers of Marines, when not borne on the books of any King's ship.

Officers of Volunteers, when—

(*a*) Commanding men subject to military law.
(*b*) Attached to regulars or troops subject to military law.
(*c*) Ordered on duty with their own consent.
(*d*) Their Corps is on actual military service.

Persons accompanying troops on active service in an official capacity equivalent to that of an Officer (*e.g.*, Political Agents).

Persons accompanying troops on active service holding a pass from the Commanding Officer of the force entitling them to the status of an Officer (*e.g.*, contractors, or newspaper correspondents).

Officers of the Reserve (other than Special Reserve) when ordered on any duty or service to which they are liable.

Officers of the Indian Army Reserve, when called out in any military capacity.

ss. 175 (1), (5), (6), (7), (8), (9), (10); 179 (15); 190 (8); A. Ann. Act, 1908, s. 5.

(ii.) *As Soldiers.*

Pensioners employed on military service under the orders of an Officer of the Regular Forces.

Non-Commissioned Officers and men of the Marines, when not borne on the books of any King's ship.

Non-Commissioned Officers and men of the Reserves, when—

(*a*) Called out for training or exercise.
(*b*) Called out in aid of the Civil Power.
(*c*) Called out on permanent service.
(*d*) Employed on military service under the orders of an Officer of the Regular Forces.

Non-Commissioned Officers and men of the Militia, when—

(*a*) At preliminary drill.
(*b*) They or their Corps are out for training.
(*c*) Attached to regulars.
(*d*) Embodied.

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Non-Commissioned Officers and men of the Territorial Force when—

(*a*) They are being trained or exercised.
(*b*) Attached to regulars.
(*c*) Embodied.
(*d*) Called out for actual military service for purposes of defence.

Non-Commissioned Officers and men of the Yeomanry, when—

(*a*) They or their Corps are out for training or exercise.
(*b*) Attached to regulars.
(*c*) In aid of the Civil Power.
(*d*) Their Corps is on actual military service.

Non-Commissioned Officers and men of the Volunteers, when—

(*a*) Training with regulars or Militia.
(*b*) Attached to regulars.
(*c*) Their Corps is on actual military service.

Note.—That in any case, except the last, they must be warned beforehand by their Commanding Officer that by going on the service they will become liable to military law.

Persons employed by, or in the service of, any of H.M. troops on active service.

Camp followers on active service.

ss. 176 (4), (5), (6), (6A),(7), (8), (9), (10); 179 (15); 190 (8).

MODIFICATIONS IN THE APPLICATION OF THE ACT.

In applying the Act to certain people included in the foregoing classes, some modifications are made, of which the following are the chief :—

In the case of Officers, soldiers, or followers, who are natives of India, Indian Military Law, as laid down in the Articles of War made by the Government of India, is to be followed. **s. 180 (2).**

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European Officers of the Indian Army and European Non-Commissioned Officers and men serving in the Indian Army Departments, are subject to the Act as Officers or soldiers of the Regular Forces. **s. 190 (8).**

Warrant Officers holding honorary commissions are subject to military law as Officers; those not holding such honorary commissions are subject as soldiers, except:—

(1) They cannot be punished by their Commanding Officer, or tried by a Regimental Court-Martial.

(2) When tried by a District Court-Martial, the Court can only inflict certain specified punishments (see p. 77). **ss. 182, 190 (4).**

Non-Commissioned Officers (which term includes acting Non-Commissioned Officers) are subject as soldiers, except:—

(1) A Commanding Officer is not obliged to deal summarily with an offence of drunkenness committed by a Non-Commissioned Officer.

(2) The *Commander-in-Chief, and in India, the Commander-in-Chief or such Officer as he may appoint, and on active service the Officer Commanding-in-Chief or any General he may appoint, can reduce a Non-Commissioned Officer to a lower grade, or to the ranks.

(3) A Non-Commissioned Officer sentenced by Court-Martial to penal servitude, field punishment, imprisonment, or detention, shall be deemed to be reduced to the ranks.

(4) An acting Non-Commissioned Officer may be ordered by his Commanding Officer, either for an offence or otherwise, to revert to his permanent grade or to the ranks.

(5) By the King's Regulations, Non-Commissioned Officers above the rank of Corporal are not to be tried by Regimental Court-Martial, unless the

* The office of Commander-in-Chief has been abolished, and the Statutory powers, hitherto exercised by this Officer, have not yet been transferred to any other body or individual; but a Bill is now before Parliament to transfer these powers to the Army Council.

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General Officer Commanding the District, Station, or Brigade, considers it impracticable to convene a District Court-Martial.

(6) A Non-Commissioned Officer cannot be punished summarily by his Commanding Officer.

ss. 183, 190 (5). K.R., 438, 499.

As regards the Marines, the power of the Admiralty to make Articles of War for their governance is specially reserved, and the Admiralty have the powers given by the Act to various military authorities in connection with soldiers of the Land Forces. A General Court-Martial for the trial of a Marine can only be convened by an Officer having a warrant from the Admiralty, except in special cases beyond the seas. Marines, when borne on the books of any King's ship, are subject to the Naval Discipline Act, unless landed for an expedition, when the Senior Naval Officer may order that, while so employed, they are to be subject to military law.

s. 179.

Colonial Forces raised by any Colony on the responsibility of the Colonial Government are subject to the law of that Colony; but, if serving with the Regular Forces then, so far as the Colonial law may be deficient for their discipline, they become subject to the Army Act.

s. 177.

Persons who do not belong to His Majesty's forces, cannot be tried by Regimental Court-Martial or punished by their Commanding Officer; but are deemed to be under the command of the Commanding Officer of the corps to which they may be attached, provided that, if possible, such persons are not to be placed under the command of an Officer whose rank is inferior to their official rank.

s. 184.

QUESTIONS.

1. Under what circumstances are (1) Officers of the Territorial Force and (2) soldiers of the Army Reserve subject to Military Law?
2. To what extent are the following persons subject to Military Law:—A Pensioner, a soldier of the Territorial Force, a soldier who is a native of India?

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3. What persons are at all times subject to Military Law? State the circumstances under which the following become subject thereto: (*a*) Army Pensioners; (*b*) Civilians.

4. Describe the circumstances under which soldiers of the Territorial Force become subject to the Army Act.

5. To what extent are the following forces subject to Military Law:—
   (1) The Army Reserve?
   (2) The Indian Forces?
   Distinguish, if necessary, between the cases of the Officers and men.

6. What persons are subject to Military Law at all times With reference to being subject to Military Law explain the position of an Army Reservist.

7. Describe the position of newspaper correspondents and camp followers attached to a force on active service, in respect of their liability to trial and punishment under the Military Code.

8. To what extent are the following persons subject to Military Law:—
   (1) An Officer on half-pay?
   (2) An Officer on the reserve list?
   (3) An Officer of Marines?

9. What special modifications are laid down in the Army Act as applicable to the following persons in respect of their subjection to Military Law, and their trial and punishment for offences, viz.:—
   (*a*) Warrant Officers not holding honorary commissions?
   (*b*) Non-Commissioned Officers?

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CHAPTER IV.

CRIMES AND PUNISHMENTS.

As already stated, all persons subject to military law are so subject either as Officers or soldiers. In the sections of the Act dealing with the different military offences, the punishment to which either of these classes is liable on conviction of each offence is stated. In every case, except two, the law has laid down the maximum punishment which may be awarded to either an Officer or soldier, and allows the Court to award that maximum or any less punishment they may think fit; *i.e.*, one lower in the scales to be presently mentioned.

The two exceptions are :—

(1) An Officer convicted of "Scandalous conduct" must be cashiered. **s. 16.**

(2) An accused convicted of "Murder" is liable to suffer death ; no alternative punishment is mentioned. **s. 41 (2).**

Scale of Punishments.

Two scales of punishments are laid down, one applicable to Officers, the other to soldiers. **s. 44.**

The punishments to which Officers are liable are :—

1. Death ; by being shot or by being hanged. The former would be given in the case of purely military offences ; the latter in the case of disgraceful offences, like murder.
2. Penal servitude for not less than three years, up to life. It will be noticed that, unlike the ordinary criminal law, various limits of penal servitude are not fixed for the different offences, but whenever it can be given at all it can legally be given for life. It commences to count from the date on which the original Proceedings of the Court are signed by the President. **s. 68 (1).**

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3. Imprisonment, with or without hard labour, for not more than two years. The sentence begins to count from the date on which the original Proceedings of the Court are signed by the President, so that if a prisoner is already under sentence the two terms of imprisonment will run concurrently. No soldier can be imprisoned for more than two consecutive years, whether under one or more sentences. Detention in custody or by the Civil Power counts; but where there is a single day's freedom, as by escape, the continuity is broken.
s. 68 (and *note*).
4. Cashiering. Note that Officers, before being sentenced to penal servitude or imprisonment, are to be cashiered. **s. 44 (2).**
5. Dismissal from His Majesty's Service. This differs from cashiering, inasmuch as an Officer who has been cashiered is thereby disqualified from ever serving the Crown again in any capacity, civil or military; whereas dismissal does not entail such disqualification.
6. Forfeiture of rank either in the Army or his Corps, or both. This punishment is effected by sentencing the Officer to take rank in the Army or his Corps as though his commission bore date the day after that of the Officer below whom it is intended he shall take precedence. It must be noted that an Officer cannot be reduced to a lower rank.
R.P., 47.
7. Reprimand, or severe reprimand, which may be administered publicly or privately, as the confirming authority may appoint. **s. 44** *note* (*g*).

In addition to or without other punishment an Officer may be sentenced to stoppages to make good any loss his offence may have occasioned, or to forfeiture of pay for every day of absence without leave. **ss. 44 (12), 137.**

The punishments to which soldiers are liable are :—

1. Death.
2. Penal servitude for not less than three years.

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3. Imprisonment, with or without hard labour, for not more than two years. This punishment should not, as a rule, be given for a purely military offence, if it is intended that the man should rejoin the colours. **K.R., 583 (iv).**

4. Detention for not more than two years. This punishment, which was introduced by the Army (Annual) Act of 1906, to avoid the stigma attaching to imprisonment for soldiers convicted of offences against military discipline and who are not sentenced to discharge with ignominy, is carried out either in military custody or detention barracks. **s. 63 (1).**

5. Field punishment which can only be awarded on active service. The rules for carrying out this punishment are made by the Secretary of State and laid before Parliament. **s. 44 (5), (9).**
Those at present in force are as follows:—
Field punishment is to consist of Field Imprisonment No. 1; or Field Imprisonment No. 2, for any period not exceeding three months. If sentenced to the first kind, the soldier may be kept in fetters or handcuffs, and secured to prevent escape; he may be tied up in a fixed position for not more than two hours in one day, or three days out of four, or twenty-one days in all; care must be taken to leave no permanent mark or injury; (when the offender's unit is actually on the move he will be exempt from the foregoing). He may be subjected to hard labour as under an ordinary sentence of imprisonment with hard labour. If sentenced to the second kind, the same rules apply, except that the soldier cannot be tied up in a fixed position. All offenders march with their unit, carrying their arms and accoutrements, perform all their duties and extra fatigues, and are treated as defaulters. **Man., pp. 598, 599.**
Note that this punishment can now be given for any offence on active service, and that the

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proviso prohibiting its being given to a non-commissioned officer has now been repealed.
s. 44 (5).

6. Discharge with ignominy from His Majesty's Service. This punishment may be added to a sentence of penal servitude or imprisonment; and the King's Regulations state that it should be added in the case of persistent offenders, or for offences of a disgraceful nature, and when a sentence of imprisonment is given. **s. 44 (4); K.R. 583 (xiii).**

7. Reduction in the case of Non-Commissioned Officers to a lower grade, or to the ranks. A reference to King's Regulations, 282, will show what positions in the Service are *ranks* and what are *appointments*. A sentence of reduction to or from an acting rank is inoperative, and is in law no sentence at all, *e.g.*, from Lance-Corporal to Private, because the *rank* of a Lance-Corporal is Private. A Non-Commissioned Officer sentenced to penal servitude, field punishment, imprisonment or detention, is deemed to be reduced, even if not expressly sentenced to reduction, but it is customary to reduce the prisoner before sentencing him to either. A Lance-Corporal forfeits his acting rank on being sentenced to any one of the above punishments. A Non-Commissioned Officer reduced to a lower rank will take precedence in that rank from the date of signing the original sentence of the Court. If a sentence of reduction is remitted he will, if no service is forfeited, retain his original seniority in his rank. **s. 183 (4), K.R 305.**

8. Forfeiture of seniority of rank in the case of Non-Commissioned Officers in the same manner as described in the case of Officers, *ante*.

9. Forfeitures. These include forfeitures of deferred pay, service towards pension, or any military decoration or reward, which includes good conduct badges and pay, any annuity for good conduct, and

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pension. A soldier convicted of desertion or fraudulent enlistment, or an offence under s. 17 or 18, or sentenced to penal servitude or discharged with ignominy, forfeits all decorations (other than the Victoria Cross) without any award of the Court. If a man is in possession of the Victoria Cross the case is reported for His Majesty's pleasure to be ascertained as to its forfeiture.

s. 44 (11); R.W. 709, 1022, 1043, 1064 (*a*), 1158; K.R. 1742; Man., p. 577, *note.*

10. Fines. These can only be given for drunkenness, and must not exceed one pound.

ss. 19, 44, *note* **(*n*).**

11. Stoppages. These can be given to make good any loss or damage occasioned by the accused's offence, and must not exceed the amount necessary to do this. Where the damage has been caused by two soldiers, each can be legally sentenced to make good the whole amount, so that in the event of it being impossible to recover his share from one, the other is liable for the whole, but if both remain amenable the stoppage would be equally divided between them. The total stoppages recovered, however, must leave the soldier at least one penny a day, after paying for his messing and washing.

s. 138 (3), (4), provisos (*a*) and (*b*), and (*note*).

12. On active service a Court-Martial may, in addition to or without any other punishment, order the offender to forfeit all ordinary pay for any period commencing on the day of the sentence and not exceeding three months. **s. 44 (6).**

Forfeiture of pay for absence without leave or desertion might be given by a Court-Martial, but the sentence would have no effect, as, under the Royal Warrant now in force, a soldier forfeits his pay for every day of such absence. A "day" is reckoned to be absence for six consecutive hours, either wholly in one day, or partly in one day and partly in another, or where, by reason of his absence, the soldier has missed a duty, which has thereby been thrown on another person. **ss. 44 (12); 138 (1); 140 (2); R.W. 902, 903.**

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Illustrations.

Private A.	Absent from Tattoo 3rd May till 3 a.m. 4th May.	Forfeits no pay.
Private B.	Absent from guard at 9 a.m. till found in his room at 9.30 a.m. (another man having been taken for guard in his place).	Forfeits 1 day's pay.
Private C.	Absent from Tattoo 3rd May till 4 a.m. 4th May.	Forfeits 1 day's pay.
Private D.	Absent from Tattoo 3rd May till 2 p.m. 4th May.	Forfeits 2 days' pay.
Private E.	Absent from guard at 9 a.m. till 4 p.m. p.m. same date (another man having been taken for guard in his place).	Forfeits 1 day's pay.
Private F.	Absent from parade at 11 a.m. till 3 p.m. same date.	Forfeits no pay.
Private G.	Absent from picquet at 7 p.m. 3rd May, till 3 a.m. 4th May (another man having been taken for picquet in his place).	Forfeits 2 days' pay.
Private H.	Absent from Tattoo 3rd May, till 12.30 a.m. 5th May.	Forfeits 3 days' pay.

A soldier also forfeits his pay for every day—

(*a*) Of imprisonment;

(*b*) Of detention;

(*c*) Of confinement—

(i) On a charge of which he is afterwards convicted by a Court-Martial, or Civil Court; unless no entry of the civil conviction is made in the Regimental Conduct Sheet.

(ii) On a charge of absence without leave for which he is awarded detention by his Commanding Officer.

A "day of confinement" is reckoned in the same way as a day of absence, as explained in the last paragraph.

(*d*) In hospital through sickness which the Medical Officer certifies was caused by an offence against the Army Act, of which he has been convicted:

This does not include sickness caused by immorality or intemperance, where there has been no conviction.

(*e*) Of absence as a prisoner of war, if it is proved to a Court of Inquiry that he was taken prisoner through his own neglect.

s. 138 (1) (2) and *notes*; **R.W. 902, 903 910; K.R. 1916** (iii).

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Illustrations.

Private A.	Confined at 11 a.m. 3rd May, for being drunk on parade; and at 10 a.m. on the 4th May, awarded 168 hours' detention and fined 5s.	Forfeits 7 days' pay.
Private B.	Absent from Tattoo 3rd May till 3 a.m. 4th May, when he returns and is confined till 10 a.m. same day, when he is awarded 7 days' C.B.	Forfeits no pay.
Private C.	Absent from Tattoo 3rd May till 4 a.m. 4th May, when he returns and is confined till 10 a.m. same day, when he is awarded 96 hours' detention, and goes to cells that day at 2 p.m.	Forfeits 6 days' pay.

In arranging the sections dealing with the different military offences, the principle adopted has been to group together offences of a like nature, and then to arrange the various groups in order according to their relative gravity.

Man., Ch. III., para. 2

Taking these groups in their order, we have, first :—

OFFENCES IN RESPECT OF MILITARY SERVICE.

s. 4.—The offences mentioned in this section can only be committed on active service, and the offender is liable to death.

Shamefully abandoning a Garrison or Post.—This offence can only be committed by the person in command. The word "post" includes any position, whether fortified or not, which a detachment has been ordered to hold. It must be proved that the abandonment was *shameful.*

s. 5.—These offences can only be committed on active service, but, not being deemed so serious as those in s. 4, the maximum penalty is penal servitude.

s. 6.—These offences, except 1 (*a*) and (*g*), can be committed either on active service or in peace time. If on active service, the offender is liable to death for all except two in sub-section (2), for which the maximum penalty is penal servitude; if not on active service, the penalty is cashiering for an Officer, and imprisonment for a soldier.

Without orders, leaving his Guard or Post.—Here the word "post" means the place where it is the duty of any Officer or soldier to be, as a sentry's beat. A Non-Commissioned Officer on gate or canteen duty leaving his post would be charged under this section.

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Forcing a Safeguard.—A safeguard is a party of soldiers detached for the protection of some particular person, or a house or other property. A sentry furnished by this party is part of the safeguard, and to force him constitutes the offence. Some authorities say the term "safeguard" includes a written document, given to the person to be protected, or posted on the property itself.

L.W. para. 96; Hall, sec. 195.

Forcing or Striking a Sentry.—Actual force is not necessary to constitute this offence. If a soldier, for instance, on being warned by a sentry not to pass his post, rushed past him without touching him, he would be guilty of having "forced the sentry."

When acting as sentinel, being drunk or asleep on his post, or leaving it before he is regularly relieved.—Even though he has not been regularly posted, a soldier is liable under this section if, being one of the guard or party furnishing the sentry, he has undertaken the duties. A soldier commits this offence who leaves his post even for a meritorious purpose, as, for example, to put out a fire; but in practice he would never be tried for it. This section does not apply to "stablemen," that is, soldiers employed in the care of horses and stables, and who are not regularly posted and relieved.

O'Dowd, p. 34; K.R. 560.

Mutiny and Insubordination.

s. 7.—*Mutiny* is collective insubordination, or the combination of two or more persons to resist lawful military authority. The essence of the offence is the combination to resist authority, hence one man, no matter how insubordinate, cannot mutiny.

Insubordination is individual resistance to military authority; any act, language, or disobedience in defiance of authority is insubordination.

Sedition is the same offence as that in the ordinary criminal law, and consists of any conduct calculated to bring into contempt, or exciting disaffection against, the Sovereign, or the Government, or either House of Parliament, or the administration of justice.

Man., Ch. III., paras. 4—6.

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Everyone causing, or joining in, a mutiny or sedition, or being present and not using his utmost endeavours to suppress it, or coming to the knowledge of any actual or intended mutiny or sedition and not informing his superior Officer without delay is liable to death.

s. 8.—*Striking, or using, or offering violence to a superior in the execution of his office.*—The offender is liable to death. The distinction between this sub-section and the next is the words, "in the execution of his office." It is impossible to give a definition of this term which will meet all cases, and a Court would have to determine from their military knowledge whether, in any particular instance, the superior was in the execution of his office. The fact of an Officer being in plain clothes would not prevent his being in the execution of his office, if, for instance, he were ordering disorderly soldiers back to barracks; but it would be necessary to prove that there were reasonable grounds for the soldier knowing the person assaulted was an Officer. A Non-Commissioned Officer asleep in the barrack-room of which he had charge, would probably be held to be within this sub-section. An Officer or Non-Commissioned Officer in barracks or quarters is in the execution of his office.

"Superior Officer." It will, of course, be for the Court to recognise from their knowledge of military ranks that the person assaulted is the superior of the accused, and this fact would not have to be proved. A private soldier, while placed temporarily in charge of a guard or other party, is, for the time being, the superior Officer of all the others.

Note that when troops become prisoners of war the ordinary military relations between superiors and subordinates and the duty of obedience remain unaltered, and any prisoner guilty of a breach of discipline will be liable to be dealt with for such, after release. **K.R. 221.**

"An offer of violence" is any defiant act or gesture which would, if completed, result in violence, *e.g.*, throwing anything at the superior or pointing a loaded firearm at him; but the term does not include any gesture, no matter how impertinent, which could not by any possibility produce violence, *e.g.*, shaking his fist from an upper window at

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a superior on the barrack square, or pointing an unloaded weapon at him.

sub-sec. (2) includes the foregoing offences against a superior not "in the execution of his office," and also *insubordinate language to a superior.*

The actual words or their substance must be proved. It has been held that insubordinate language regarding one superior if used *to* another (*i.e.*, with the intent that it should be heard by the latter) comes under this section. But expressions used (1) in the course of a judicial inquiry, (2) by a party to the case, (3) and pertinent to and *bona-fide* for the purposes of the inquiry, cannot be made the subject of a criminal charge, no matter how offensive to a superior. Coarse or abusive expressions used by a drunken man should not, as a rule, be charged under this section ; and care should always be taken to discriminate between mere angry expressions used in a moment of irritation by a man of inferior education, and words indicating a deliberate insubordinate intent. Improper language, not amounting to insubordination, should be charged under s. 40.

Man., Ch. III., para. 30; Ch. V., para 86.

For offences under this sub-section an offender is liable to penal servitude, on active service ; at other times, to cashiering or imprisonment.

s. 9.—*Disobeying in such a manner as to show a wilful defiance of authority a lawful command given personally by a superior in the execution of his office.* The offender is liable to death. It must be proved

(1) That the command was lawful.
(2) That it was given personally by a superior.
(3) In the execution of his office, and
(4) That it was disobeyed defiantly.

A "lawful command" means not only a command which is not contrary to the ordinary Civil Law, but one which is also justified by Military Law. **Man., Ch. III., para. 10.**

Thus, for example, an Officer tells his soldier servant to bring round his horse from the stable. If the horse were his charger, and he required it for military duty, this would be a "lawful command" ; but if the Officer were in plain clothes and wanted the horse for hunting, this would

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not be a "lawful command" within the meaning of the section. **O'Dowd, p. 49.**

Religious scruples furnish no excuse for disobedience. The disobedience must refer to some command to be carried out at once. A man who, when ordered to perform some future duty, refuses, does not disobey, and if placed in arrest, must be charged under s. 8. Physical impossibility to comply with the order, of course, furnishes an excuse for not obeying it.

sub-sec. (2) deals with disobedience of a command not necessarily given personally by the superior, and the manner of disobeying need not show wilful defiance. It will be sufficient if the command is given by an agent of the superior, but it must be a specific order to an individual. In other respects, the notes to the foregoing sub-section apply also to this one. The offender is liable to penal servitude on active service; otherwise, cashiering or imprisonment.

s. 10.—*When engaged in a quarrel, etc., refusing to obey, or striking an Officer (although junior), who orders him into arrest.* A junior Officer has authority to order into arrest any Officer, even of higher rank, who is engaged in any quarrel, fray, or disorder. **s. 45 (3).**

If the Officer ordering the arrest were the superior, then to strike him or disobey him would be an offence under s. 8 or 9. Only Officers should be charged under this sub-section.

Striking or offering violence to anyone, whether subject to military law or not, in whose custody he is placed. Striking a civilian policeman who had the offender in custody would come under this sub-section.

Resisting an Escort. The resistance may be merely passive, as by lying down and refusing to move. Running away from an escort to prevent capture would also be within the sub-section.

Breaking out of barracks is the offence of quitting barracks when a man has no right to do so, either because he is a defaulter, or on duty, or by the custom of the Service should not leave barracks (*e.g.*, between tattoo and reveillé) It is immaterial whether the offence was committed by

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violence or stratagem, or simply walking out of the gate unnoticed. "Breaking out of quarters" relates to the case of a man leaving one part of a barrack for another, where he had no right to be at the time. **O'Dowd, p. 53.**

Only soldiers can be charged under this sub-section.

The penalty for any of the offences in this section is cashiering in the case of an officer or imprisonment in the case of a soldier.

s. 11.—*Neglecting to obey general or other orders.* "General orders" do not include Army Orders or the King's Regulations; but if any parts of such orders or regulations are re-published in garrison or regimental orders they become part of these latter orders, and disobedience will render the offender liable. Ignorance of a published order is no excuse, if it was the duty of the offender to know it. The publication of the order must be proved. This section does not include non-compliance, through forgetfulness, with an order to do something at a future date; this would be charged under s. 40. Penalty, cashiering or imprisonment

Desertion, Fraudulent Enlistment, and Absence without Leave.

s. 12.—*Desertion* is absence without leave with the intention of permanently quitting the Service, or of evading a particular important duty, such as embarkation with a draft, or going out in aid of the Civil Power.

Man., Ch. III., paras. 13, 16.

The period the accused has been away, or the distance he has gone, or whether he is dressed in plain clothes or not, or whether he surrendered or was apprehended, are none of them facts which of themselves constitute the offence, though they would be taken into consideration by the Court in determining whether he were guilty of the offence of desertion or of absence without leave. The fact that he had committed a serious crime just previous to absenting himself would point to the probable intention of his remaining away to escape the consequences of that crime. **Man., Ch. III., paras. 14–19.**

Attempting to desert is any act which is a prelude to desertion, although no actual absence can be proved, as if a

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soldier were caught in the act of slipping past a sentry or climbing over a barrack wall. **Man., Ch. III., para. 18.**

Whenever a soldier has been absent twenty-one * days, a Court of Inquiry is to be assembled as soon as possible to enquire into and record the fact of his illegal absence and deficiency of kit, if any. This Court consists of three Officers, who are not themselves sworn, but take evidence on oath. After their declaration that the man has been absent twenty-one days is confirmed by the Commanding Officer, it is put away with the regimental records and is equivalent to a conviction of desertion if the man does not return, and he is accordingly struck off the strength as a deserter. If he rejoins he is tried for desertion, this record being used as evidence against him at the trial; unless he can prove any facts showing that he intended to return all the time, in which case his offence would only be absence without leave. **s. 72; R.P. 125; K.R., 673, 1909.**

The maximum penalty for any offence under this section is death, if committed on active service or under orders for active service; otherwise, imprisonment for the first offence and penal servitude for the second or any subsequent offence. For the purposes of liability to the higher punishment, a previous conviction of fraudulent enlistment is considered as equivalent to a previous conviction of desertion. A man convicted of desertion, or whose trial for this offence has been dispensed with by the competent military authority under s. 73, forfeits all his prior service towards limited engagement, and has to start his service afresh, like a recruit, from the date of conviction or of the order dispensing with trial. **s. 79 (2).**

This forfeited service may be restored by the Secretary of State to any soldier who may perform good and faithful service, or after he has served three years in an "exemplary manner," *i.e.*, without an entry in the Regimental Conduct Book, or on his promotion to Serjeant. **s. 79. K.R., 273.**

s. 13.—*Fraudulent Enlistment* is the offence committed by a soldier of the Regular Forces, or a Militiaman, or soldier of

* The soldier must have been absent for a period of 21 clear days before the court can be legally assembled. The day on which the soldier became absent and the day on which the court is assembled must not be reckoned. **A.O.** $\frac{229}{08}$.

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the Territorial Force when embodied, or a Yeoman called out on actual military service, who, without fulfilling the conditions enabling him to do so, enlists or enrols into any part of His Majesty's Forces, or in any force raised in India or a colony, or enters the Royal Navy.

It will thus be seen that for a soldier to be guilty of fraudulent enlistment he must really be a deserter from another Regiment, as unless he is a soldier of the Regular Forces when committed for trial, the offence of unlawfully enlisting is not within this section, but would come under s. 32 or 33. In trying a man, he is usually deemed to belong to the Corps in which he has last enlisted and is held to serve on his last attestation. He is not, as a rule, also charged with the desertion from his former Regiment.

K.R., 525.

For the first offence, the offender is liable to imprisonment, and for the second or any subsequent offence to penal servitude. For the purposes of liability to the higher punishment, a previous conviction of desertion (except the desertion immediately preceding the fraudulent enlistment), is considered as equivalent to a previous conviction of fraudulent enlistment. The rules as to forfeiting service towards limited engagement, and its restoration are the same as that stated above in the case of desertion.

s. 79 (2). K.R. 273.

s. 14.—*Assisting a person to desert, or knowing of any intended desertion, not forthwith telling his superior officer or taking some steps to prevent it.* Maximum penalty, imprisonment. A civilian who assists a deserter is liable to six months' imprisonment on summary conviction. **s. 153.**

s. 15.—*Absence without leave* is reckoned to begin from the first roll-call, or parade, or other duty, at which the absentee did not appear, and ends as soon as he returns or is apprehended. Involuntary absence, as, for example, detention by the Civil Power, does not count as absence without leave. If the absence is proved, the onus will lie on the accused of showing that he had leave. When the absence is from some particular parade or duty, then it falls under sub-sec. (2), otherwise the offence will come under the first sub-section. A man absent without leave is not also liable

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to be tried for failing to appear at all the parades, etc., during his absence.

Being found in a prohibited place or going beyond bounds. Ignorance of the order putting the place out of bounds, or fixing the bounds, is no excuse; but if the order is not clearly worded, then a mistake arising therefrom would excuse the soldier.

Absence from school. This offence and those mentioned in the last sub-section can only be committed by soldiers.

The maximum penalty for offences against this section is cashiering for an Officer or imprisonment for a soldier. As already noted, when dealing with punishments, the pay of an Officer may be forfeited for every day of absence without leave; and, in the case of soldiers, pay is forfeited for every such day of absence.

ss. 137 (1), 138 (1); R.W. 902 (*a*).

Disgraceful Conduct.

s. 16.—*Scandalous conduct, unbecoming the character of an Officer and a gentleman.* Only an Officer can be tried under this section, and, if convicted, he *must* be cashiered, the Court having no discretion in the matter of punishment. In order to sustain a charge under this section, it must be shown that the conduct was not only prejudicial to good order and military discipline, but reflects such discredit upon the Service that the offender is unfit to remain connected with it. **O'Dowd, p. 66.**

Misconduct not coming within this section might be tried under s. 40.

s. 17.—*When charged with the care of money or goods, stealing or embezzling them or conniving at such theft or embezzlement.* Maximum penalty, penal servitude. This section differs from s. 18 (4) in that the offender is the person actually charged with the care or distribution of the property made away with, so that he is guilty of a breach of trust, and thus renders himself liable to the heavier punishment of penal servitude. The expression "charged with the care of" does not include a sentry posted over a

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building containing public property, but means the person must have been officially so charged as part of the duty of his office or employment. Hence a Corporal or Private entrusted with money by a Pay-Serjeant, for his own convenience, would not come within this section.

s. 18.—*Malingering or feigning disease.* Malingering means a more serious case of feigning disease, implying some active deceit, such as taking a drug or doing something which would produce the appearance of the disease.

Misconduct or disobedience producing disease or delaying its cure. The misconduct must be with the intent of producing or aggravating the disease, and does not include the involuntary production of disease by immoral conduct or intemperate habits.

Stealing (or theft) is the wilfully, wrongful taking possession of the money or goods of another with intent to deprive the owner of his property in them.

Man., Ch. VII., para. 56; Harris, p. 190.

Embezzlement is the unlawful appropriation to his own use, by a servant or a clerk, of money or chattels received by him, for and on account of his master or employer.

Man., Ch. VII., para. 59; Harris, p. 226.

The legal distinction between these two offences is highly technical, and for all practical purposes might be abolished. It largely depends on the difference in law between the two terms, *custody* and *possession*. Thus, if a master gives his plate to his butler to take care of, the latter has the *custody* of the plate, but the *possession* of it is in the master, and if the butler makes away with it he *steals* it. If, however, the master sends his butler to the silversmith's to fetch plate which he has bought, and the silversmith delivers the plate to the butler for his master, the plate is now in the *possession* of the butler, and has not yet come into the master's *possession* until the servant either hands it over to him or puts it with the other plate in the pantry, so that, if on the way home he makes away with it, he *embezzles* it. **Stephen, Crim., pp. 428, 430.**

One other example may, perhaps, help to make the difference clear. A clerk receives £20 from a person for

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goods sold for his master; he at once pockets it, appropriating it to his own use; this is *embezzlement*—the money has never got into the master's *possession*. On the other hand, if the clerk puts the £20 in the till, and then after the customer has gone, takes it for his own use, this is *stealing*—when the money was put in the till it came into the constructive *possession* of the master. **Harris, p. 226.**

It must be observed that to bring the offence within this section the money or goods made away with must be "military" property, *i e.*, belonging to an Officer or comrade, or some regimental institution, or "public" property. If they are not either "public" or "military" property, the offence does not come under this section, but falls under s. 41 (5), which deals with offences against the ordinary criminal law. The offence of theft from a comrade should be tried by Court-Martial, and not by Civil Court, unless there are peculiarly complicated circumstances connected with the case. **K.R. 556.**

sub-sec. (5) deals with all other offences of a fraudulent nature, not being stealing or embezzling, and with any disgraceful conduct. **W.O. letter 110 Inf./200, d/3 July, 07.**

A charge of disgraceful conduct must show that the conduct was palpably "disgraceful." Only soldiers can be tried under this section. Maximum penalty, imprisonment.

Drunkenness.

s. 19.—*Drunkenness, whether on or off duty*, renders an Officer liable to be cashiered; and a soldier to imprisonment, and, either in addition to, or in substitution for, any other punishment, a fine not exceeding one pound. The case of a sentry drunk on his post has already been considered under s. 6.

It should be noted that this section creates only one single offence, viz., *drunkenness*, if the offence was committed on duty, or when warned for duty, the fact that the offence was so committed and the nature of the duty should be stated in the statement of particulars of the charge. The terms "aggravated" and "simple" drunkenness have been abolished.

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Drunkenness includes intoxication from the effects of opium or any similar drug, as well as from liquor.

A.O. $\frac{55}{08}$; Man., Ch. III., para. 25.

OFFENCES IN RELATION TO PERSONS IN CUSTODY.

s. 20.—*Releasing a person in custody without due authority, or allowing him to escape.* If the offender acted *wilfully*, the maximum penalty is penal servitude; if *negligently*, imprisonment. It will be for the accused to show that he acted under due authority. If an escort of a Non-Commissioned Officer and a private lose the soldier in their custody, the blame will primarily rest on the Non-Commissioned Officer unless it can be proved that the private shared in allowing the escape to take place, or unless the Non-Commissioned Officer shows that he had good grounds for temporarily leaving the soldier in the care of the private. A man who, having completed his term of imprisonment or detention, is being conducted back to his Corps, is no longer a soldier in arrest.

s. 21.—This section deals with various branches of the law laid down for preventing a person in custody being unduly kept in confinement without having his case disposed of. The maximum punishment is cashiering or imprisonment.

Any one committing a soldier into custody must give in, either at the time or within twenty-four hours, a written account, termed "the charge" to the person in whose custody he is placed. **s. 45 (4) and *note*.**

The Commander of the Guard must enter the names of all soldiers in arrest in his Guard Report, which he must send in as soon as his guard is relieved, or in any case within twenty-four hours of the soldier being confined. **K.R. 463.**

A Commanding Officer must investigate all charges within forty-eight hours of their being notified to him, or must report not doing so, with his reasons, to the General Officer Commanding the District. **R.P. 2.**

If eight days elapse without the case being disposed of summarily or a Court-Martial being ordered, a special report must be made to the General Officer Commanding, and repeated every eight days, except on active service.

s. 45 (1); R.P. 1.

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If more than fifteen days in the United Kingdom, or thirty days elsewhere, elapse between the receipt of an application for a General Court-Martial or a District Court-Martial and the disposal of the case, either by the assembly of such a Court or otherwise, the General Officer must report the circumstances to the Army Council, or, in India, to the Commander-in-Chief in India. **R.P. 17** (c).

s. 22.—*Escaping from lawful custody, or attempting to do so.* A soldier in arrest escapes when he unlawfully goes beyond the control of the person in whose custody he is placed. The escape may be either with or without force or artifice, and with or without the connivance of the custodian. A soldier in arrest finding the door of his cell open, and walking out of the prison, is guilty of an escape; but if a soldier, undergoing imprisonment, is working outside the confines of the prison and is not under the supervision of a warder or other custodian, and goes away, this is not an offence under this section. **O'Dowd, p. 77.**

An Officer or Non-Commissioned Officer "breaking his arrest" commits an offence against this section. The maximum penalty is cashiering or imprisonment.

Offences in relation to Property.

s. 23 is concerned with corrupt dealings in respect of supplies for the troops, the penalty being imprisonment.

s. 24.—*Making away with, or losing by neglect, articles of kit, etc.* In a charge for "making away with," it must be stated whether they were sold, pawned, etc., and in the absence of proof of such selling or pawning, the charge must be for "losing by neglect." **K.R. 562.**

It must be proved in evidence that the articles deficient were actually issued to the soldier, and the onus of showing that the loss has not occurred through his neglect will then rest on him.

"Equipments" are defined to include "every article issued to a soldier for his use, or entrusted to his care for military purposes," hence it will include such things as blankets and barrack furniture.

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"Military decoration" includes any medal, clasp, good conduct badge, or decoration. **s. 190 (18).** It must be carefully noted that there is nothing in the section which makes it an offence to lose by neglect a military decoration.

The steps to be taken when a soldier is discovered to be deficient of his medals are laid down in K.R., 1754.

Wilfully injuring property. The property must be public property, or belong to an Officer or comrade, or to some regimental institution, to bring the offence within this section. Injuring the private property of civilians would come under s. 41 (5).

Ill-treating any horse used in the public service. A soldier-groom ill-treating an Officer's charger commits this offence, but if the horse were not used for military duty at all no offence would be committed against this section, though the man could be tried under s. 41 (5). **O'Dowd, p. 82.** "Horse" includes mule, or other beast of burden or draught. **s. 190 (40).** And as in all Acts of Parliament masculine words include the feminine, it, of course, includes "mare." **52 & 53 Vict., c. 63, s. 1.** Only soldiers can be tried under this section, and the maximum punishment is imprisonment.

Offences in relation to False Documents and Statements.

s. 25 deals with falsifying official documents and making false declarations, the punishment for which is imprisonment. A trivial error in a report should not, in the absence of fraud, be made the ground of a charge under this section. It is essential to prove an intent to defraud someone, but it is not necessary to show who the particular person was, or whether it was the Government. "False declaration" in sub-sec. (3) relates to those made by Paymasters and others in a fiduciary position, or by Officers on promotion, but does not include statements in a summary of evidence or verbal reports or statements.

s. 26 makes it an offence to sign any document in blank, or to neglect to send in any reports or returns. The

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neglect must be culpable, something more than mere carelessness. The punishment is cashiering or imprisonment.

s. 27.—*Making a false accusation against an Officer or soldier, or a false statement affecting his character.* The accusation mentioned in sub-sec. (1) must be an accusation and not a mere statement. A statement made by an accused in his defence, even though false, is not an offence. It is not an offence under this section to make a complaint, even though it be false or frivolous, unless it affects the character of some other Officer or soldier. **O'Dowd, pp. 85, 86.**

Falsely confessing desertion or fraudulent enlistment, etc. This offence can only be committed by a soldier. The statement must be made to the Commanding Officer, *i.e.*, the Officer whose duty it would be to deal with such a charge according to the definition of Commanding Officer given in R.P., 129. A written statement made for the purpose of being laid before the Commanding Officer is a statement to him.

Making a false statement in respect of prolongation of furlough. This offence can only be committed by a soldier. When a soldier, by reason of sickness or other unforeseen casualty, finds it necessary to obtain an extension of furlough, he must go to any General or Staff Officer, or to any Commanding Officer not under the rank of captain, or if none of these are within convenient distance, to any Justice of the Peace, any of whom are empowered to extend his furlough for any period not exceeding one month, reporting to the man's Commanding Officer that this has been done. The Commanding Officer can cancel the extension, but the man cannot be punished as an absentee if he rejoins at once, or for having obtained the extension, unless he obtained it by making a *false* statement to the Officer or Justice.

s. 173; K.R. 1312.

The punishment for offences against this section is imprisonment.

Offences in Relation to Courts-Martial.

s. 28 deals with the offences of a witness refusing to attend, or to give evidence, and with contempt of Court.

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Military witnesses are ordered by their Commanding Officer to attend; the rules as to their being sworn, and the questions they are legally required to answer, will be considered in the Chapter on Evidence. Offences under this section are not triable by the same Court as that in connection with which they took place. The punishment is cashiering or imprisonment. In the case of contempt of Court, by using insulting language or interrupting the proceedings, the Court may, if they think fit, sentence the offender summarily by order, under the hand of the President, to be imprisoned, or if a soldier to undergo detention for any period not exceeding twenty-one days. (For Form Order of *Vide* Manual p. 598). This applies to an Officer, who could be thus punished by a District Court-Martial or Regimental Court-Martial for such contempt. The order does not require confirmation. The imprisonment or detention must be carried out at once, and, therefore, if the offender is the accused, the Court must adjourn until the end of the imprisonment. It would only be in extreme cases that this power would be used; it is more usual for the President to report the contempt to the proper authority, and allow the case to be dealt with by another Court if necessary; or the Court may accept an apology sufficient to vindicate their dignity.

s. 29.—*Giving false evidence when examined on oath,* This offence is similar to the offence of perjury at civil law. but it has even a wider application; for in perjury it is necessary to prove that the matter falsely sworn to was *material* to the point in issue, **Harris, p. 82**; whereas, to bring the case within this section, the false swearing need not be material, though, of course, in practice, if it is very trivial, it would hardly form the basis of a charge. It is necessary to prove—

(1) That the accused was sworn (or made a solemn declaration);

(2) That he swore as stated; this must be proved by the evidence of the Officer who recorded the evidence, or by some person who actually heard him give evidence; the mere production of the former Proceedings is not enough;

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(3) That the evidence was false; one witness, unless corroborated in some material point, is not enough for this; and

(4) Some fact showing the false swearing was wilful, *i.e.*, that the accused did not believe, or was not ignorant of the falseness of, what he stated.

Even if the statement be literally true, yet, if it is calculated to create a false impression and is made for that purpose, it is within the section. **O'Dowd, p. 89** *et seq.*

The punishment for this offence is imprisonment.

Offences in Relation to Billeting.

s. 30.—This section deals with various offences, such as doing violence to a person on whom billeted, or failing to pay for billets, or unlawfully demanding billets, etc. The punishment is cashiering or imprisonment. Or the offender may be dealt with by a Court of Summary Jurisdiction, and is liable to a fine not exceeding £50. **s. 111.**

Offences in Relation to Impressment of Carriages.

s. 31.—This section deals with various offences, unlawfully demanding carriages, etc., or failing to pay for them, or making them travel beyond the legal distance, or carry stores not entitled to be carried, or ill-treating the owners, etc. The punishment is cashiering or imprisonment. The offender may also be dealt with by a Court of Summary Jurisdiction, and is liable to a fine not exceeding £50 and not less than 40s. **s. 118.**

Offences in Relation to Enlistment.

s. 32.—*Enlisting after having been discharged with disgrace.* This offence can, of course, only be committed by a soldier, as an Officer does not "enlist." The term "discharged with disgrace" means:—

(1) Discharged with ignominy, *i.e.*, by sentence of Court-Martial.

(2) Discharged as incorrigible and worthless.

(3) Discharged for misconduct.

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(4) Discharged on account of a conviction for felony, *i.e.*, by the Civil Power. All offences against the ordinary criminal law are either felonies or misdemeanours, the distinction is somewhat arbitrary. **Harris, p. 8**; or

(5) Discharged on account of a sentence of penal servitude.

The punishment is imprisonment.

s. 33.—*False answer on attestation.* This includes any false answer, but if the offence amounts to fraudulent enlistment, or to an offence against the last section, the soldier is charged under those sections respectively instead of under this one. A false answer as to name or age would not usually form the subject of a charge. Provision is made in the King's Regulations for a soldier who has enlisted under an assumed name to have his true name added to his documents as *alias*, **K.R., 1899,** and for a soldier who has enlisted under age to be discharged. **K.R., 390** (vi.). Men of the Army Reserve improperly enlisting are tried under this section, and then relegated to the Reserve. **K.R., 522** (iii.). If it is intended that a soldier shall be retained in the Service, he is tried by Court-Martial under this section; if it is intended that he shall be discharged, he is tried under s. 99 by the Civil Power; but proceedings cannot be taken before the Civil Power if more than six months have elapsed since the commission of the offence. **K.R., 522** (v.); **11 & 12 Vict., c. 43, s. 11.** The punishment under this section is imprisonment.

s. 34 deals with general offences in connection with enlistment, *e.g.*, a recruiter conniving at a recruit making a false answer on attestation. The punishment is imprisonment.

Miscellaneous Military Offences.

s. 35.—*Using disloyal words regarding the Sovereign.* Happily this is not an offence likely to occur, for whatever faults we may have in the Army, we cannot be accused of disloyalty. Should a case occur, the intention must be shown, for a man uttering mere violent or vulgar language

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while under the influence of liquor would not fall within this section. The punishment is cashiering or imprisonment.

s. 36.—*Making injurious disclosures as to the Forces.* This offence would usually, though not necessarily always, be committed on active service. It principally relates to persons under military law, who are newspaper correspondents; but injurious disclosures, even in private letters may render an Officer or soldier liable. **K.R., 453.** The unauthorized communication of intelligence to the enemy falls within s. 5 (4). The punishment under this section is cashiering or imprisonment.

s. 37.—*Striking a soldier, or unlawfully detaining pay.* This offence can only be committed by an Officer or a Non-Commissioned Officer. One private soldier striking another would be charged under s. 40. The word "soldier" includes a Non-Commissioned Officer. **s. 190 (6).** Hence a senior Non-Commissioned Officer striking a junior comes within this section; if a junior strikes a senior it comes under s. 8. The "ill-treatment" must be physical ill-treatment. **O'Dowd, p. 98.** Pay can only be withheld in accordance with the provisions of a Royal Warrant or Secretary of State's instructions, framed in accordance with ss. 137, 138, and 145.

s. 38.—*Duelling* is prohibited in accordance with the ordinary law. If a duel takes place and death ensues, the surviving principal and both seconds are guilty of murder. **Archbold, p. 718.** An Officer carrying a challenge comes within this section.

Attempting to commit suicide is prohibited in accordance with the ordinary law. The punishment for offences against this section is cashiering or imprisonment.

s. 39.—*Refusing to hand over to the Civil Power, soldiers accused of civil offences.* A soldier accused of a crime against the criminal law can be arrested by the Civil Power, **s. 144**; and his Commanding Officer must hand him over to a constable having a warrant for his apprehension, but he may demand to see the warrant first. The punishment is cashiering or imprisonment.

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s. 40.—*Conduct to the prejudice of good order and military discipline.* For conduct or neglect to come under this section it must be such as is clearly prejudicial to military discipline, and not merely of a social kind, though sometimes the place and circumstances in which the offence was committed will bring it within the section. "Neglect" must be culpable and not due to misapprehension or inadvertence. Attempts to commit most of the military offences, except such as are specially legislated for (*e.g.*, attempting to desert, s. 12), would fall within this section. It must be carefully noted that no crime which is an offence against any other section of the Act is to be charged under this one; but a conviction would not be invalid merely because it is in contravention of this proviso, provided no injustice is done to the accused. Punishment: cashiering or imprisonment.

Offences Punishable by Ordinary Law.

s. 41.—While saving the power of the Civil Courts to deal with any Officer or soldier who commits an offence against the ordinary law, this section makes all civil offences, when committed by persons subject to military law, offences against the Army Act, and allows these offences (with certain exceptions) to be tried by Court-Martial. The exceptions are treason, murder, manslaughter, treason felony, and rape; these five offences can never be tried by Court-Martial (except a Field General Court-Martial **s. 49 (3)**), when committed in the United Kingdom; and elsewhere in the King's Dominions, except Gibraltar, only when committed on active service, or a hundred miles away (measured in a straight line) from a competent Civil Court.

Treason; after many extensions of the meaning of this crime in the despotic times of the Tudors, the law has been settled that only those offences named in the Statute of Treasons, 25 Edward III., st. 5, c. 2, are now included, of which the chief are, imagining the Sovereign's death or that of the heir to the throne, levying war against the Sovereign in any of His Dominions, aiding the enemies of the Sovereign, etc. Treason must be proved by some overt act; spoken words do not alone constitute the offence,

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but the writing of such words is an overt act. **Stephen, Crim. Arts., 52—58.** Punishment : death.

Murder is unlawful homicide with malice aforethought. **Stephen Crim. Art., 244.** To make the killing murder, the death must follow within a year and a day after the stroke or other cause. **Harris, p. 52.** Punishment: death ; no alternative mentioned.

Manslaughter is unlawful homicide without malice aforethought, but, whenever one person is killed by another, the law always presumes murder, and the burden of proving extenuation or justification lies upon the accused. **Stephen, Crim. Arts., 244, 251.**

Treason felony ; certain offences which had been declared treason, were, by an Act of the last reign (11 & 12 Vict., c. 12), made felonies, and are now usually tried as treason felonies under this Statute. Such are, an intention to deprive the King of his Crown or Royal dignity ; to levy war on him to force him to change his measures, or to put constraint on either House of Parliament; or to stir up foreigners to invade the Realm or the King's Dominions. **Stephen, Crim. Art., 63.**

Rape is the act of having carnal knowledge of a woman without her conscious permission. **Stephen, Crim. Art., 270.**

The punishment for either of the last three offences is penal servitude.

All other offences against the ordinary criminal law can be punished in the same way as if tried by a Civil Court, or may be punished by cashiering or imprisonment.

When any person has been acquitted or convicted by a Civil Court of any offence, he cannot be dealt with under military law in respect of the same offence.

s. 162 (6).

QUESTIONS.

1. What principle is adopted in classifying the military offences dealt with in Part I. of the Army Act ? To what extent are military Courts given discretion as to the amount of punishment to be awarded for any particular offence ?

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2. Define the following offences:—Forcing a safeguard, desertion, breaking out of barracks.

3. Distinguish between mutiny, insubordination, and sedition. Explain the nature of the offences which would be covered by the general term of insubordination.

4. What is meant by the expression, "offers any violence?" What punishment may be awarded for the offence of "offering violence to a superior Officer"?

5. "Disobeying a lawful command." Illustrate, by an example, the difference between a lawful command and one that would not be deemed lawful. Under what circumstances may the penalty of death be awarded for the above offence?

6. The punishments that may be awarded for "striking a superior Officer" and "disobedience to a superior Officer" vary according to circumstances. Explain what these circumstances are, and state the maximum punishment in each case.

7. Under what circumstances is the offence of "disobedience" punishable by death? How is disobedience to a garrison order or a King's Regulation treated?

8. A Private is ordered by the Officer Commanding his Company to lay out his kit for inspection daily until further orders. He says at once, "It is not fair, I will not do it," and is then placed in arrest. With what offence would he be charged before a Court-Martial?

9. What is "desertion"? State the offences connected with desertion for which the Army Act punishes people subject to military law, and the maximum punishments assigned for such offences.

10. Distinguish between fraudulent enlistment and false answer on attestation; stealing and embezzlement.

11. Explain the distinction between scandalous conduct and conduct to the prejudice of good order. To what punishment is the offender liable in each case?

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12. "*Strikes*, or *uses*, or *offers* violence." Show by examples the meaning of these three phases of a similar offence. How would the offence be punished if the violence was displayed towards a superior officer?

13. Enumerate five crimes which are punishable more severely if committed on active service, than if committed not on active service.

14. What is meant by the term "Discharged with disgrace"? Explain the particular object with which this term is accurately defined by the Army Act.

15. Define fraudulent enlistment, and point out the punishments that may be awarded in respect of it.

16. With reference to the section of the Army Act dealing with "conduct to the prejudice," etc., comment on the nature of the offences which should be charged under it, and point out the saving-clause in connection therewith.

17. Explain clearly the purport of Section 41 of the Army Act, in respect to the trial of civil offences by Court-Martial.

18. Under what circumstances, and to what persons, can Courts-Martial award "Field Punishment"? State briefly the rules under which such sentences are regulated and carried out.

19. What is meant by the punishment styled "Forfeiture" in the scale applicable to soldiers? Explain whether such punishment can be awarded by any kind of Court-Martial, for any kind of offence.

20. State briefly the regulations about "detention" as a punishment that a Court-Martial may award. In what respect has the punishment that can be awarded by a Court-Martial to a Non-Commissioned Officer been amended?

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CHAPTER V.

ARREST OF OFFENDERS AND INVESTIGATION OF CHARGES.

Arrest and Confinement.

When a person subject to military law commits an offence, he may be taken into military custody. **s. 45 (1).** Military Custody means, in the case of an Officer, Warrant Officer, or Non-Commissioned Officer, usually arrest, but if necessary, any of them may be placed under charge of a guard, picquet, etc. ; in the case of a private soldier, it means either placing him in open arrest, or putting him in confinement under charge of a guard, picquet, etc.

s. 45 (2) ; K.R., 465, 473.

A junior Officer may order a senior into arrest if the latter be engaged in any quarrel, fray, or disorder.

s. 45 (3).

Arrest is either close or open ; when not specified, it means close arrest. An Officer in close arrest is not to leave his quarters, except to take such exercise, under supervision, as may be deemed necessary by the Medical Officer. When in open arrest, he may take exercise within defined limits as to time and place, or may be directed to proceed from one station to another. He is, however, forbidden to appear at any mess or public place of amusement, and must always be dressed in uniform, but without his sash, sword, belts or spurs.

K.R., 466, 467.

An Officer may be placed under arrest by competent authority without previous investigation, should the nature of the offence demand it ; but, ordinarily, a Commanding Officer will not place an Officer under arrest until he has inquired into the matter, and is satisfied that it will be necessary to proceed with the case. When an Officer is

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placed under arrest, a report is to be made at once to the General Officer under whose command he is. **K.R., 469.** Except when an Officer has been placed under arrest in error, he should not be released without the sanction of the highest authority to whom the case has been reported. No Officer can demand a Court-Martial or persist in considering himself under arrest after he has been released. Should he think himself aggrieved, he can seek redress through the proper channel, as prescribed in s. 42.

K.R., 468, 470.

The rules as to the arrest of Officers apply to Warrant and Non-Commissioned Officers, who, if charged with a serious offence, will be placed under arrest at once ; but if the offence is not serious, it will be investigated without previous arrest. **K.R., 471.**

When private soldiers are placed in confinement, they are usually placed in the guard detention room.

K.R., 473.

A private soldier charged with a serious offence is to be placed in arrest at once, and the Non-Commissioned Officer who orders him to be confined is to do so without altercation, and will avoid coming into personal contact with the man, but will obtain the assistance of one or more privates to escort him to the guard detention room. Except in cases of personal violence or on detached duties, Lance-Corporals and Acting-Bombardiers of less than four years' service will not confine men without previous reference to the Orderly-Serjeant. **K.R., 475, 477.**

The Commander of a Guard or Picquet, or the Provost-Marshal, cannot refuse to receive anyone committed to his custody, but it is the duty of the person confining the accused to deliver at the time of committal, or in any case within twenty-four hours, an account in writing, signed by himself, called " the Charge " or the " Charge report," showing the offence with which the accused is charged. **s. 45 (4).** If this " Charge report " is not received within twenty-four hours, the Commander of the Guard will take steps to procure it, or will report that he has not received it to the Officer to whom he renders his Guard Report; who, if the " Charge

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report," or evidence sufficient to justify his detention, is not forth-coming within forty-eight hours, will order his release. The Commander of the Guard must enter in his Guard Report the name and offence of any person who has been in his custody, together with the rank and name of the person by whom he is charged, and the original "Charge report" is forwarded to the accused's Commanding Officer. **K.R., 463.**

A man once confined can only be released by competent authority, *e.g.*, if confined in a regimental guard detention room he can only be released by the authority of the Officer Commanding the Regiment; and if in a garrison guard detention room, by the authority of the Officer Commanding the Garrison. **Man., Ch. IV., para. 11.**

An offender in arrest or confinement is not to be required to perform any duty beyond handing over any cash, stores, or accounts for which he may be responsible, and he is not to bear arms except by order of his Commanding Officer, in an emergency or on the line of march, or by order of the Governor, in a military prison, or of the Commandant, in a detention barrack, for purposes of instruction, exercise, or practice. If, however, he has been ordered to do any duty, he is not thereby absolved from liability for his offence. **K.R., 482.** The fact of putting arms into the hands of a soldier in arrest, or employing him on duty, does not amount to condonation of his offence. Condonation must be the deliberate act, in his magisterial capacity, of the person having power to dispose of the offence. It must be an intentional act of forgiveness. **O'Dowd, p. 27.**

In the case of minor offences, the investigation of the charge may be held without the man being confined. A soldier, against whom a charge for a minor offence is pending, will not quit barracks until his case has been disposed of. He will attend all parades, but will not be detailed for duty. **K.R., 473.**

When troops are in billets or on the line of march, or accommodation for soldiers in arrest is not available, the Commanding Officer may commit a soldier in military custody to a civil prison or lock-up for a period not exceeding seven days. **s. 132 (2); K.R., 476.**

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Except on active service, whenever anyone is detained in military custody for more than eight days without a Court-Martial being ordered for his trial, a special report must be sent to the General Officer Commanding the District, and a similar report made every eight days till the Court assembles or the accused is released. **s. 45 (1); R.P., 1.**

Any constable, Officer, soldier, or other person may apprehend anyone whom he reasonably suspects to be a deserter, and bring him forthwith before a Court of Summary Jurisdiction. If the Court is satisfied that such person is a deserter, it must deliver him into military custody or remand him till he can be delivered, and a "Descriptive Return," as described in the Fourth Schedule of the Act, is forwarded to the proper military authority. If the man appears to be a deserter or absentee, the Commanding Officer will send an escort for him (including if possible, men able to identify him). If the escort fail to identify the man, they will not take him over, but will report the circumstances. **s. 154. K.R., 533, 540.**

If a deserter surrenders to a portion of his own corps, and can be identified, or if a man in uniform surrenders as a deserter, and there are grounds for believing his confession, he may be taken into military custody. In no other case, however, may a person not serving, be taken into military custody, except for the purpose of being forthwith handed over to the Civil Power. **K.R., 517.**

Investigation of Charges.

All charges against Non-Commissioned Officers and men will be investigated without delay in the presence of the soldier in arrest by the Officer Commanding his Squadron or Company. Commanding Officers are authorized to grant large discretionary powers to these Officers of disposing of any offences with which they can deal themselves (*Vide infra* p. 56.) Any not so disposed of will be investigated by the Commanding Officer. **K.R., 484.** All charges must be investigated by the Commanding Officer within forty-eight hours of their being reported to him, exclusive of Sundays, Good Friday, and Christmas Day. If for any

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reason this cannot be done, a report must be made to superior authority. **R.P., 2, 135 (A).**

Charges for offences of Non-Commissioned Officers and men confined in the guard detention room, or of Non-Commissioned Officers reserved by the Squadron or Company Commander for disposal by the Commanding Officer are entered in the Guard Report by the Commander of the guard. Those of privates, not confined, are entered in the Minor Offence Report under the orders of the Commander of the Company, etc. If this Officer reserves such a charge for the Commanding Officer's disposal, he will send the "Charge Report," A.F. B 252, to be entered in the Guard Report. If the charge against a man, who has been confined, is disposed of by the Company Commander, an entry will be made in the punishment column of the Guard Report.—"Disposed of on A.F. B 281." **K.R., 485.**

The investigation of offences takes place, when practicable, in the morning, before the hour of Commanding Officer's parade. The accused is marched in under escort, without his cap; the charge against him is read out, and the witnesses against him give their evidence; the Commanding Officer will then ask the accused what he has to say in his defence, and hear any witnesses he may wish to call. The evidence given before the Commanding Officer is not on oath, unless the accused demands it, which he has the right to do whenever the Commanding Officer deals with the case summarily. **s. 46 (6).** He may give evidence himself. **R.P., 3 (A).** The Officer Commanding the man's Company will produce his Company Conduct Sheet, and the Commanding Officer will determine how he will dispose of the case. He will dismiss the charge if he thinks the evidence does not disclose an offence, or if he thinks the charge ought not to be proceeded with (*e.g.*, if for some trivial offence). **K.R., 481, 485, 488.**

If he thinks it should be proceeded with, he may—

(1) Dispose of the case summarily;
(2) Refer it to the proper superior authority;
(3) Adjourn the case to have the evidence reduced to writing. **R.P., 4 (B).**

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In the last case, after the summary of evidence has been taken, it will be considered by the Commanding Officer, who may then—

(1) Remand the accused for trial by Court-Martial ;
(2) Refer the case to the proper superior authority ;
(3) If he thinks fit, and the accused has not claimed a Court-Martial, re-hear the case and dispose of it summarily. **R.P., 5 (A).**

The award of the Commanding Officer is entered by him in the Guard Report, and those of Officers Commanding Companies (with any remissions the Commanding Officer thinks fit to make) in the Minor Offence Report. Copies of Minor Offence Reports (A.F. B 281) are issued weekly to each Company, etc., and at the end of the week are sent into the Orderly Room, for the Commanding Officer's inspection, and are then attached to the Guard Report of that day. These documents are signed by the Commanding Officer and preserved to be laid before the General at the next Annual Inspection. If the Commanding Officer thinks it desirable for any reason, he can order the Minor Offence Report to be laid before him daily, for his inspection. If an accused is remanded for further inquiry, his case must be brought under review daily till disposed of. If at the time of investigation sufficient evidence is not forthcoming to show whether the accused is guilty or not, and there is no opportunity of completing the investigation at the time, the accused, if the offence be serious, may be released, without prejudice to his re-arrest when further evidence is forthcoming ; if, however, the offence is trivial, the case should be dismissed. **K.R., 485, 486, 490, 1920.**

There is nothing in the Army Act which prevents a Commanding Officer dealing summarily with any offence, and indeed, he *must* so deal with the offence of drunkenness committed by a private soldier when not on duty or not warned for duty, unless the man has four previous cases of drunkenness in the last twelve months ; but the King's Regulations, para. 487, lay down that a Commanding Officer is only to deal with offences against certain sections of the Act therein enumerated, and that charges for all other offences must be

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referred to superior authority; except in cases of emergency, when he may dispose of the case and report to the superior Officer. **ss. 46 (3), 183 (1); K.R., 487, 550.**

When a Commanding Officer has once awarded punishment for an offence he cannot afterwards increase it, though he may subsequently diminish it. The award is considered final when the accused has been marched out from the Commanding Officer's presence. **R.P., 6** (B), and *note*. He cannot alter the record in the conduct sheets after the punishment has been completed. But an Officer not below the rank of Brigadier-General can, within two years, if he thinks the punishment illegal or excessive, order the record to be expunged. After two years from the date of award the case must be referred to the Army Council. **K.R., 507.**

QUESTIONS.

1. Explain the difference between *close arrest* and *open arrest*. State the regulations as to reporting the arrest of an Officer.
2. State the principal instructions given in the King's Regulations relating to *(a)* the placing an Officer in arrest; *(b)* the restraints and conditions applicable to such Officer.
3. In reference to the arrest of an Officer, state the regulations as to (1) the person who should order the arrest; (2) the report to be made when the arrest is ordered; (3) releasing an Officer from arrest.
4. What instructions are laid down in the King's Regulations as to the course to be followed by a Non-Commissioned Officer who is about to order a soldier to be taken to the guard detention-room?
5. An Officer orders a soldier to be confined. What further steps must be taken as to reporting the offence committed?
6. A soldier has committed an offence and is taken to the guard detention room. Specify the duties of the Commander of the Guard in respect of reporting to higher authority the fact that the accused is in his custody.

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7. Private A.B. is confined in the guard detention room of the Lancashire Regiment, by order of Lieutenant X., at 5 p.m., on a certain date. An hour afterwards, Lieutenant X. sends a message to the guard-room stating that he wishes the accused to be released. Is the Commander of the Guard justified in acceding to the request? Give your reasons.

8. How is a soldier treated against whom a charge for a minor offence is pending? By whom should the offence be investigated and punished?

9. An offender, while in arrest or confinement, is not to bear arms or do duty. What are the exceptions to the above general rule?

10. Point out the various provisions which prevent a soldier being detained in custody unnecessarily long, or the investigation of his case being needlessly delayed.

11. Describe in detail the whole procedure at the investigation of an alleged offence by the Commanding Officer, fully explaining the circumstances under which an oath would be administered to the witnesses in the case.

12. A Commanding Officer adjourns the investigation of an offence for the purpose of having the evidence taken down in writing. Assuming that this is done, what several courses are open to him?

13. A Commanding Officer proposes to deal summarily with an offence committed by a soldier. In the event of the soldier thinking the proposed award to be unjust, is he obliged to submit to it? Explain.

14. In respect of the investigation of a charge by a Commanding Officer, state the regulations as to (1) a witness giving evidence on oath; (2) the accused giving evidence on oath.

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15. What restrictions are laid upon certain Non-Commissioned Officers relative to exercising the power of confining soldiers ?

16. State briefly the regulations in connection with the account of the accused's offence, commonly called the "Charge Report."

17. State the regulations in force which prevent a soldier being unduly detained in custody pending the investigation of the offence with which he is charged.

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CHAPTER VI.

POWERS OF COMMANDING OFFICERS.

The term Commanding Officer, in those sections of the Act relating to *Courts-Martial*, *Execution of Sentence*, and *Power of Commanding Officer*, and in the Rules of Procedure, means the Officer whose duty it is to deal with a charge against a person subject to military law of having committed an offence. For the purpose of awards of fines for drunkenness, and of a summary finding involving forfeiture of pay, it includes the Officer Commanding a squadron or company. **R.P., 129.**

A Commanding Officer, in dealing with a case summarily, has the following powers :—

(A) In the Case of a Private Soldier.

He may award either a *summary* or a *minor* punishment, but before awarding a summary punishment, or if the award or finding will involve forfeiture of pay, he must first ask the man whether he wishes to be tried by District Court-Martial instead of submitting to his award. If the Commanding Officer omits to ask the man this question, he may still exercise his right at any time that day before the usual hour for the commitment of soldiers under sentence. If the man has claimed a Court-Martial, he is to be given an opportunity on the following day of reconsidering his decision, unless there are reasons against this course.

s. 46 (2), (8), (9) ; R.P., 7 (A) ; K.R., 496.

The *summary* punishments which a Commanding Officer can inflict are :—

(i.) *Detention*, up to fourteen days, or, in the case of absence exceeding seven days, detention for each day of absence not exceeding twenty-one days. Except in cases of absence, detention exceeding seven days will not be awarded by any but Field Officers. Detention up to

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seven days, inclusive, will be awarded in *hours*, and will begin to count from the time* the man goes to the detention rooms ; unless he does not go to the detention rooms until the following day, in which case it begins to count on that day, at the usual hour for the commitment of soldiers under sentence. Detention exceeding seven days will be awarded in *days*, and begins to count from the day of award.

s. 46 (2), (4), (5) ; R.P., 6 (A) ; K.R., 493 (i.) ; R.W., 905.

Illustration.

The following sentences awarded on the 1st of any month will commence and expire as under :—

Punishment.	Date of Going to detention rooms.	Commences.	Expires.
168 Hrs. Detention.	2 p.m., 1st	2 p.m., 1st	2 p.m., 8th
168 Hrs. Detention.	2 p.m., 2nd	2 p.m., 2nd	2 p.m., 9th
168 Hrs. Detention.	2 p.m., 3rd	2 p.m., 2nd	2 p.m., 9th
8 Days Detention.	2 p.m., 1st	1st	Midnight, 8th
8 Days Detention.	2 p.m., 2nd	1st	Midnight, 8th

A man undergoing detention may, for a fresh offence, be awarded a further sentence of detention, which begins to count from the day of award, provided that he cannot be kept in detention for more than fourteen consecutive days, except for absence. **K.R., 494 (v).**

(ii.) *Fines* for drunkenness, not exceeding 10s., according to scale. **s. 46 (2).**

This award is compulsory, except when the unpaid fines amount to 20s.

The scale of fines is as follows :—

For the first offence no fine.

For the second offence, 2s. 6d.

For the third and every subsequent offence :—

If within three months of the last offence, 10s.

If over three but within six months, 7s. 6d.

If over six months, 5s.

The period during which a soldier is absent from duty by reason of imprisonment, detention, or absence without leave is not counted in the time since the last case of drunkenness.

* The usual hour for commitment of soldiers under sentence to detention rooms is 2 p.m.

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When men are re-transferred to the colours from the reserve, cases of drunkenness recorded against them before transfer to the reserve will not be taken into account in computing the fines for further instances of that offence after they rejoin the colours.

In colonial corps the fines to be levied will be one half the above amounts. **K.R., 493 (ii.), 512**

Illustrations.

Private A. was drunk on the 13th February, absent from the 10th March to 9th April, and is drunk again on the 4th June. He is liable to a fine of 2s. 6d.

Private B. was drunk on the 14th March, 6th July, 16th August, and 25th November, 1900, and is drunk again on the 11th April, 1901. He is liable to a fine of 7s. 6d.

In dealing with cases of drunkenness unconnected with another offence, confinement to barracks should only be added to the fine when the circumstances are such as to add to its gravity. Detention should never be awarded for drunkenness unless the man is liable to trial, or his unpaid fines amount to 20s. **K.R., 497.**

When a man (not on active service) commits the offence of drunkenness, when not on duty, nor warned for duty, for which he is not liable to trial, together with a more serious offence, for which he is to be tried, in order to preserve a record of the drunkenness an entry will be made by the Commanding Officer, imposing a fine if the man is liable to a fine, or if he be not, by making a note in the punishment column, "No punishment, awaiting trial on another charge." If an entry of the Court-Martial is afterwards made, these two entries are bracketed together and count as one. **K.R., 511.**

(iii.) *Any deductions from ordinary pay* authorized by s. 138 (4), (6) of the Army Act. This may be the amount required to make good any loss, damage, or destruction caused by his offence. In recovering stoppages from a man's pay, he must always be left a residue of one penny a day. **ss. 46 (2), 138 (*a*) ; K.R., 493 (iii.).**

On active service he may award :—

(i.) *Field punishment* for any period not exceeding twenty-eight days.

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(ii.) *Forfeiture of ordinary pay* for any period, commencing on the day of the sentence, not exceeding twenty-eight days. This punishment may be given in addition to or without any other punishment. **s. 46 (2).**

The *minor* punishments which a Commanding Officer can inflict are :—

(i.) *Confinement to barracks* for any period not exceeding fourteen days. Confinement to barracks commences from the day of award (unless it is combined with a sentence of detention or awarded to a man already a defaulter), and the first day of the punishment ends at midnight that day. During the time a man is a defaulter he cannot quit barracks except on duty; he will attend all parades and take all his ordinary duties, and, in addition, extra fatigues as much as possible, to relieve the well-conducted men. If these extra fatigues do not keep him fully employed, he may be given punishment drill during the first ten days of his confinement to barracks. Punishment drill consists of marching in quick time in marching order, for not more than two hours a day in mounted corps, or four hours in dismounted corps. It is not to be carried on after retreat, without the sanction of the Brigade Commander, under exceptional circumstances. When troops are in billets, the defaulters are to be marched out along a road for the prescribed period. Defaulters are to answer their names at uncertain hours during the day They are only allowed to enter the canteen during one hour in the evening. They are not required to make up any portion of their punishment which they have missed by being in hospital, or in prison or on duty. **K.R., 493 (iv.), 494, 498.**

A man already a defaulter may be given a further award of confinement to barracks to commence on the termination of his previous sentence, provided the total award does not exceed twenty-eight days. **K.R., 494 (v.).**

(ii.) *Extra guards and picquets*; only awarded for irregularities when on, or parading for, these duties. **K.R., 493 (v.).**

Any of the above punishments can be combined, subject to the following restrictions :—

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(1) When detention exceeding seven days is given, no minor punishment can be added ;
(2) A single award of detention and confinement to barracks must not exceed fourteen days in all ;
(3) The confinement to barracks will take effect on the termination of the detention.

s. 46 (9) ; K.R., 494.

Illustrations.

Private A. is awarded 10 days' detention. No C.B. can be added.
Private B. is awarded 168 hours' detention. Any number of days' C.B., not exceeding 7, may be added.

Private C. is on the 1st November awarded 168 hours' detention and 7 days' C.B. ; assuming he goes to cells on the afternoon of the 1st, his detention will expire at 2 p.m. on the 8th ; the C.B. will then commence ; the first day's C.B. will expire at midnight on the 8th, and the punishment will expire at midnight on the 14th.

A private soldier may be admonished, but is not to be reprimanded. Admonition is entered in a man's conduct sheet only in cases of drunkenness and those involving forfeiture of pay. **K.R., 493, 1921.**

In the case of absence, a Commanding Officer will make no award of forfeiture of pay, as the pay is forfeited by Royal Warrant for every day of absence, but he will inform the man of the number of days' pay forfeited, which will be noted in the column of remarks. The man has the right to claim a Court-Martial if he denies the absence. This rule as to forfeiture applies also to all Warrant and Non-Commissioned Officers. **K.R., 495.**

(B) In the Case of Non-Commissioned Officers.

In dealing with Non-Commissioned Officers, including acting Non-Commissioned Officers, the Commanding Officer cannot award any summary or minor punishment, but they may be :—

(i.) Admonished ;
(ii.) Reprimanded ;
(iii.) Severely reprimanded ;
(iv.) Ordered to revert to their permanent grade, if an acting or lance Non-Commissioned Officer :
(v.) Removed from any appointment.

If the soldier's permanent rank is above that of Corporal, the sanction of an Officer not below the rank of Brigadier.

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General will be necessary. If any Non-Commissioned Officer on removal from his appointment is not qualified for the duties of his permanent rank, the Commanding Officer will refer the case to Head-quarters, with a view to his reduction by the *Commander-in-Chief.

s. 183 (2), (*c*) ; K.R., 302, 303, 493, 499.

When a Non-Commissioned Officer is convicted by the Civil Power, the case is to be reported to an Officer not below the rank of Brigadier-General to decide whether he will recommend his reduction under s. 183 (2).

K.R., 506.

Powers of Officers Commanding Companies and Detachments.

Officers Commanding Companies, etc., may award private soldiers punishment not exceeding seven days' confinement to barracks, extra guards and picquets, and the regulated fines for drunkenness; and may deal with cases of absence where pay is automatically forfeited by Royal Warrant. They can also admonish, or reprimand, but not severely reprimand, Non-Commissioned Officers below the rank of Serjeant or appointment of Lance-Serjeant. In the case of Officers of less than three years' service, the Commanding Officer may limit their powers to three days' confinement to barracks. Such awards are subject to any remission the Commanding Officer may order, but cannot be increased. **K.R., 499, 501.**

The Officer Commanding a Detachment has the same powers as the Officer Commanding a Corps; but if he is under the rank of substantive Major he may be restricted in these powers, either by the Officer Commanding the Corps or Garrison, or other superior authority. If, however, necessity arise, he may, notwithstanding such restriction, act to the full powers of a Commanding Officer, sending an immediate report of his action to the Officer who had restricted his powers. **K.R., 457.**

* *Vide* Note on p. 10.

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QUESTIONS.

1. Enumerate the various punishments that can be summarily awarded to a soldier by the Commanding Officer of a Corps.

2. Explain fully the power of a Commanding Officer to award detention.

3. When a Commanding Officer summarily awards detention, how should he express the period of its duration? Give the rules which determine when the period awarded shall be deemed to commence.

4. Write down the scale of fines for drunkenness.

5. The amount of a fine for drunkenness depends upon the time that has elapsed since the previous instance, and also upon the time within which a number of preceding instances have taken place. Explain how the absence, without leave, for a month, of a soldier would affect the calculation of the two periods of time in question.

6. From a soldier's conduct sheet it appears he was drunk on the following dates. What fines should have been awarded in each case:—
   (1) 5th January, 1904 (first offence).
   (2) 20th February, 1904.
   (3) 25th May, 1904.
   (4) 10th August, 1904.
   (5) 15th November, 1904.
   (6) 14th April, 1905.
   (7) 1st August, 1905.
   (8) 10th April, 1906.

7. The following instances of drunkenness are recorded against a soldier. Fine him according to the scale:—
   (1) 1st July, 1890 (first offence).
   (2) 10th December, 1890.
   (3) 15th February, 1891.
   (4) 15th July, 1891.
   (5) 5th December, 1891.
   (6) 10th July, 1892.

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8. Point out the circumstances under which a Commanding Officer is restricted from awarding a punishment of detention exceeding 168 hours. When would he be justified in awarding detention for the offence of drunkenness?

9. The following offences have been dealt with summarily, and are found entered in the Company Conduct Sheet, of a private soldier who was attested on 10th April, 1895. You are required to state the fine (if any) applicable to each instance of drunkenness, and whether the Commanding Officer could, at his discretion, have awarded detention in respect of the drunkenness in any of these cases:—

(*a*) 20th Aug., 1907.	Drunk in barracks.
(*b*) 15th Sept., 1907.	Drunk on parade.
(*c*) 15th March, 1908.	Drunk in barracks.
(*d*) 10th May, 1908.	Absent at tattoo, till tattoo 24th May, for which he was awarded detention for 15 days.
(*e*) 10th July, 1908.	Drunk, and riotous in the town.
(*f*) 20th Aug., 1908.	Absent at tattoo, till 10 a.m., 21st August.
(*g*) 30th Sept., 1908.	Drunk, after being warned for guard.

10. A soldier is sent for trial for an offence which he committed while drunk, but he is not liable to trial by Court-Martial for drunkenness. How should the Commanding Officer deal with the offence of drunkenness?

11. Describe, fully, the powers of a Commanding Officer to award detention for the offences of (1) absence without leave, and (2) drunkenness.

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12. Explain, fully, the power of a Commanding Officer to punish a private soldier for the offence of absence without leave.

13. State the regulations affecting the award of confinement to barracks, and combined awards of detention and confinement to barracks.

14. A soldier is awarded 10 days' confinement to barracks. Explain, in full detail, the effect of this punishment.

15. At orderly-room, at 9 a.m., on the 1st June, the following awards are made :—

    (1) 48 Hrs. detention.
    (2) 168 Hrs. detention and 7 days' C.B.
    (3) 10 days' detention.
    (4) 14 days' C.B.

    State the exact time at which each of these punishments expires.

16. Under what circumstances would a soldier be ordered to pay for his drunkenness a fine of ten shillings, and a fine of twenty shillings? How is the amount of the fine recovered from the soldier?

17. A Commanding Officer, at 9 a.m., on the 1st May, makes the following awards :—

    (1) 48 Hrs. detention.
    (2) 8 days' detention.
    (3) 10 days' C.B., followed by a second award, on the 8th May, of 96 Hrs. detention.
    (4) 10 days' detention, followed by a second award, on the 5th May, of 10 days' detention.

    On what day and hour will these punishments respectively terminate?

18. Point out the defects (if any) in the following summary awards :—

    (1) 7 days' detention, and 10 days' C.B.
    (2) 10 days' detention and 7 days' C.B.
    (3) Fined 12s. 6d.
    (4) 56 days' C.B.
    (5) Forfeiture of two good conduct badges.

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19. What constitutes a day for the purpose of forfeiture of pay? When a soldier absents himself for three days, is any discretion left to the Commanding Officer in respect of forfeiture of pay?

20. Under what circumstances would a soldier forfeit one, two, and three days' pay respectively? How would the forfeiture be recorded?

21. State the forfeiture of pay in each of the following cases of absence without leave (no duty being thrown on another soldier):—

    (1) 10 a.m., 1st May, to 5 p.m., 1st May.
    (2) 10 p.m., 1st June, to 2 a.m., 2nd June.
    (3) 10 p.m., 1st July, to 6 a.m., 2nd July.
    (4) 10 p.m., 1st August, to 10 p.m., 2nd August.
    (5) 10 p.m., 1st September, to 3 a.m., 4th September.

22. State the forfeiture of pay in the following cases of absence without leave. It may be assumed that, by reason of the absence of the offender, military duty was thrown upon another soldier:—

    (1) 10 a.m., 1st June, to 6 p.m., 1st June.
    (2) 8 p.m., 2nd June, to 3 a.m., 3rd June.
    (3) 10 p.m., 3rd June, to 3 a.m., 4th June.
    (4) 10 p.m., 4th June, to 2 a.m., 6th June.
    (5) 10 p.m., 6th June, to 6 a.m., 11th June.

23. Apply the regulations as to forfeiture of pay for absence to the following cases:—

    Private A. absent from tattoo 10 p.m., 1st June, to 2 a.m., 2nd June.
    Private B. absent from tattoo 10 p.m., 1st June, to 7 a.m., 2nd June.
    Private C. absent from tattoo 10 p.m., 1st June, to 3 p.m., 2nd June.
    Private D. absent from tattoo, 10 p.m., 1st June, to 6 a.m., 4th June

    What difference would arise in each case in the event of the soldier's absence preventing his fulfilling a military duty which was thereby thrown on another person?

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24. Describe the different ways in which a Commanding Officer can deal with offences committed by Non-Commissioned Officers in his own Corps.

25. How would a Commanding Officer deal with the following cases:—(1) A Band-Serjeant is found unfitted for his post, (2) a Serjeant is convicted of an assault on the police by the Civil Power?

26. Offences coming under the following general headings are the subject of investigation. Distinguish between those that could be summarily treated by a Commanding Officer, and those which would have to be sent for trial by General or District Court-Martial :—

    (1) Disobeying a lawful command.
    (2) Offering violence to a superior.
    (3) Breaking out of barracks.
    (4) False answer on attestation.

27. Explain fully the power of a Commanding Officer to deal with offences committed by Non-Commissioned Officers. To what extent may an Officer Commanding a Company deal with such cases?

28. A Serjeant and a Lance-Corporal of a certain Corps have been convicted and punished for an offence by a Civil Court; what further steps should be taken, according to regulations, for determining whether these Non-Commissioned Officers should respectively continue to hold their present positions, and with whom would the decision rest in each case?

29. To what extent may a Commanding Officer delegate to the Officer Commanding a Company the power of awarding punishment for minor offences?

30. How are "minor offences" usually dealt with in respect of (1) the custody of the offender, (2) the investigation and disposal of the offence, (3) the record of the punishment?

31. What powers of punishment may be exercised by Officers Commanding Detachments?

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32. Explain what punishments may be combined in one award and when the accused must necessarily be given the choice of being tried by Court-Martial.

33. As a Commanding Officer deal summarily with the following offences, awarding the most severe punishment in your power, and noting any forfeiture of pay that will be incurred.

    (1) Private A. absent from 10 p.m., 1st September, 1906, till 5 a.m., 3rd September, 1906.

    (2) Private B. absent from 10 p.m., 1st September, 1906, till 6 a.m., 12th September, 1906.

    (3) Private C. drunk on Guard (not liable to a fine).

    (4) Lance-Corporal D. fighting in barracks.

34. When is detention awarded in hours, and when in days? Show, by examples, when periods of imprisonment in either case commence and expire.

35. Under what circumstances is a soldier given the option of being tried by Court-Martial instead of submitting to the award of his Commanding Officer? What happens if, by mistake, the option is not given him at the time the case is being dealt with?

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CHAPTER VII.

PROCEEDINGS BEFORE TRIAL.

Before considering the various steps to be taken when a soldier has been remanded for trial by Court-Martial, it will be convenient to note here the peculiar case of a man having confessed either desertion or fraudulent enlistment, and his trial for the offence being dispensed with by competent military authority. When a man has signed a confession of having committed either of these offences, and it is not considered desirable to try him, application is made to one of the authorities named in s. 73 of the Army Act (usually the Brigade Commander) for authority to dispense with his trial. The confession should accompany the application, and, if possible, evidence as to its truth. The form of confession to be used is given in K.R., para. 542. If the Brigade Commander, or other competent authority, decides that the man shall not be tried, he issues an order dispensing with his trial (for form of order *vide* A.F., A. 46). This will be equivalent to a trial by Court-Martial, and will be entered in the man's Regimental and Company conduct sheets. He will forfeit all service towards limited engagement prior to the date of signing the order. And he will suffer the same forfeitures and deductions from pay as if he had been convicted by Court-Martial, except such as are specially mentioned in the order.

ss. 73, 79 (2) ; K.R., 541—544.

Summary of Evidence.

When a soldier has been remanded for trial by Court-Martial, the first thing to be done is to take the summary of evidence. This is a statement taken down in writing, in a narrative form, of the evidence given by the witnesses at the investigation held before the Commanding Officer. It is taken in the presence of the accused and of the Command-

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ing Officer, or some Officer deputed by him. The accused may question the witnesses as to any variance in their evidence now, and that given before the Commanding Officer, and these questions and answers will be included if material. The accused can give evidence himself and call witnesses in his defence, and make any statement he likes, which will be added in writing, but he cannot be required to sign it, and should be warned that anything he says may be used against him at his trial. The witnesses sign their statements, and the whole summary is signed by the Officer before whom it is taken, who will add a certificate that the requirements of R.P. 4, have been complied with. The evidence is not given on oath. The accused's evidence and any statement he makes must be kept quite distinct.

R.P., 3 (A), **4** (C), (D), (E), and *notes* ; **Man., p. 583.**

In the case of an Officer a summary of evidence need not be taken unless he demands it ; but he must then be furnished with an *abstract* of the evidence at least twenty-four hours before his trial. **R.P., 8.**

The uses of this summary of evidence are : first, it is forwarded with the application for trial to the Convening Officer, to enable him to see that there is a *prima facie* case against the accused. If he decides to try him, the summary is forwarded to the President, to let him get a general idea of the case he is going to try ; it is laid before the Court by him, and can be used in checking the evidence given by the witnesses at the trial. If the prisoner pleads guilty, it is read to the Court to let them see the circumstances under which the offence was committed, and thus guide them in determining the sentence, and it is then attached to the Proceedings to guide the Confirming Officer.

R.P., 17 (A), (E), and *notes*, **37** (B), **App. II., p. 564.**

Framing Charges.

The next step will be to draw up a charge sheet containing the charges which the evidence given in the summary discloses, and upon which it is intended to try the accused.

A charge is an accusation that a person subject to military law has been guilty of an offence. A charge sheet

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contains the whole issue or issues to be tried at one time, and may contain one or more charges. **R.P., 9.**

Every charge sheet must begin with the name and description of the accused and an averment that he is subject to military law. **R.P., 10.** The proper forms to be used for the commencement of a charge sheet are given in R.P., App. I., Part I., p. 532 *et seq.*

Each charge is divided into two parts :

(1) The statement of the *offence.*

(2) The statement of the *particulars.*

The statement of the *offence* must, unless it is a civil offence, be in the words of the Army Act, and, if a civil offence, in such words, not necessarily technical, as will sufficiently describe the offence. **R.P. 11** (B), (C). The statement of the offence will be in the forms given in R.P., App. I., Part II., pp. 534—542. In using these forms, the following rules must be observed.

Where two or more words or expressions are bracketed together, the particular word or expression which most accurately describes the offence must be used.

Illustration.

s. 8 (1). Striking / Using violence to / Offering violence to } his superior Officer, being in the execution of his office.

Here, the expression used must be "striking, "using violence to," or "offering violence to," according as the accused actually *struck*, or *used other violence* (*e.g.*, kicked), or *offered violence* (*e.g.*, attempted to strike).

s. 24 (2). Losing by neglect { his arms. / his ammunition. / his equipments. / his instruments. / his clothing. / his regimental necessaries. / a horse of which he had charge.

Here, the words used will be those which describe the articles lost, *i.e.*, "arms" if they are a rifle or bayonet ; "equipments" for belts, water bottle, etc., ; "clothing" for tunic, cape, boots, etc. ; "regimental necessaries" for shirt, socks, brushes, etc.

The word "and" may be used to couple two or more such words or expressions ; but a charge must never be in the alternative ; thus, the word "or" joining two such expressions would be a bad charge.

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Illustrations.

"Losing by neglect his clothing *and* regimental necessaries" is a good charge.

"Losing by neglect his clothing *or* regimental necessaries" is a bad one, as it leaves it doubtful whether the accused is charged with losing his clothing *or* his necessaries.

Where, in the forms, words in italics, enclosed in square brackets, are shown, it will be necessary to substitute for these general words the exact words defining the circumstances of the offence.

Illustration.

s. 11. Neglecting to obey { General / Garrison / [*other*] } Orders.

If, for instance, the accused has disobeyed Regimental Orders, then the word "Regimental" must be substituted for [*other*] in the statement of the offence.

Words shown in square brackets [ ] will be adopted or not, according to circumstances.

Illustration.

s. 12. [When on active service] deserting His Majesty's service.
The words in brackets must be omitted if the accused was not "on active service."

R.P., App. I., (5), (7), (11), (12).

The statement of the *particulars* need not be in any prescribed form of words, but they must state such circumstances concerning the offence as will enable the accused to know what the particular crime he is charged with consists of. All the ingredients necessary to constitute the offence should be stated. If the exact place is the essence of the offence it must be stated, otherwise a general description will suffice, and sometimes such words as "near" or "between" may be used. Similarly, a date should be stated, and if the exact date is not known, the words "on or about" may be used; but if the exact date and time are of the essence of the offence they must be stated. Sometimes the particulars in one charge may refer to the particulars in another, *e.g.*, "at the place and on the date mentioned in the first charge."

R.P., 11 (D), (E); **App. I., (16)—(22).**

When the offence has caused any loss, for which it is desired the Court should award stoppages, the particulars of this loss must be added, as, for example, when a man is charged with fraudulent enlistment, an averment is added,

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stating that he "thereby obtained a free kit, value ——." In the case of making away with or losing kit, values are only put in the charge sheet against those articles which are Government property; those which are the soldier's own property he will have to replace at his own expense, without any sentence of the Court.

R.P., 11 (F), App. I., (23); K.R., 563.

The statement of the *particulars* must correspond in substance with the statement of the *offence*; if there is such a divergence between them that in effect one specifies one offence and the other another, the charge is illegal and cannot stand. **O'Dowd, p. 22.**

In framing charges under s. 24, in the absence of evidence of some positive act of pawning or selling, etc., a charge of "making away with" should not be framed, but the prisoner should be charged with "losing by neglect." **K.R., 562.**

It must be observed, as already noted against the different sections when considering the different crimes, that some of them can only be committed by an Officer, and others by a soldier.

Illustrations.

s. 16.—Behaving in a scandalous manner unbecoming an Officer and a gentleman,
Could only be charged against an Officer.

s. 37.—Striking a soldier,
Could only be charged against an Officer or N.-C.O., *not* a Private.

s. 10 (4).—Breaking out of barracks,
Could *not* be charged against an Officer.

s. 18 (4).—Stealing goods, the property of a comrade,
Could *not* be charged against an Officer.

Each charge must disclose one offence only, and in no case can an offence be described in the alternative in the same charge. Thus, it would be wrong to charge a man with "making away with by pawning *and* selling his arms, etc." If the evidence shows that he pawned some articles and sold others, two charges must be framed, one charging him with *pawning* certain things, the second with *selling* the other articles. **R.P., 11 (A). App. I., (7)—(10).**

When it is doubtful whether the facts proved by the evidence are more correctly described by one word or expression than another, alternative charges may be

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framed, each charge containing one of the expressions which appear applicable to the facts capable of being proved, *e.g.*, "Stealing goods, the property of a comrade," or "Receiving, knowing them to be stolen, goods, the property of a comrade." **R.P., App. I., (6).**

Separate charge sheets are used to prevent the embarrassment which might arise to the Court or the accused by trying several charges at one time, especially if the facts are very complicated, or if the offences took place at different times, or if quite different sets of witnesses are required to prove the various charges. In practice, therefore, not more than three or four charges should be placed in the same charge sheet, and offences of different descriptions should be in separate charge sheets, unless they form part of the same wrongful transaction. **R.P., 62 (A), *note.***

When a soldier is arraigned on a serious charge, minor charges against him are not usually included in the charge sheet. **K.R., 568.**

The charge sheet should be signed by the accused's Commanding Officer, and the section of the Act under which each charge is framed should be inserted in the margin in red ink. If the accused has elected to be tried, it should be so stated at the top of the charge-sheet.

Man., p. 583.

Illustrations.

1. Evidence tends to prove that Private A. sold to a civilian two shirts which he had been seen to take stealthily out of Private B.'s valise.
2. Private C., who has not been drunk for over a year, gets drunk, uses insubordinate language to Serjeant D., and knocks him down.
3. Private E., a Militiaman out for training, is awarded 7 days' C.B. by his Commanding Officer; he is found by the picquet in the town that evening.

The following would be the proper charge sheets to frame against these men:—

1. CHARGE SHEET.

The accused No. 1418, Private John A.——, 1st Bn. Royal Scots, a soldier of the Regular Forces, is charged with—

s. 18 (4). Stealing goods, the property of a comrade,

in that he

at Edinburgh, on the 29th October, 1907, stole two flannel shirts, value 7s. 10d., the property of James B.——, a private of the same regiment.

Edinburgh,
31st Oct., 1907.

D. GORDON, Lt.-Col.,
Commg. 1st Bn. R. Scots.

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2. CHARGE SHEET.

The accused, No. 5396, Private William C.——, 2nd Bn. East Kent Regiment, a soldier of the Regular Forces, is charged with—
s. 8 (2). Striking his superior Officer,
in that he
at Aldershot, on the 30th October, 1907, struck with his clenched fist Serjeant Peter D.——, of the same regiment.
Aldershot, 1st Nov., 1907. H. SMART, Lt.-Col., Commg. 2nd Bn. Buffs.

3. CHARGE SHEET.

The accused, No. 2278, Private Patrick E.——, a Militiaman, of the 3rd Bn. Connaught Rangers, out for training, is charged with—
s. 10 (4). Breaking out of camp,
in that he
at the Curragh, on the 1st June, 1907, broke out of camp when confined thereto by order of his Commanding Officer.
Curragh, 3rd June, 1907. M. FITZGERALD, Lt.-Col., Commg. 3rd Bn. Conn. Rangers.

APPLICATION FOR TRIAL.

If the Court before which the accused is to be arraigned is a Regimental Court-Martial, it will be convened, as a rule, by his Commanding Officer; if, however, the Court is to be convened by some higher authority, an application for the assembly of the Court must be made on A.F. B 116, and the documents specified in the Form must be sent in with it. These documents are:—

1. The charge-sheet in duplicate.
2. The summary of evidence.
3. The accused's Squadron or Company Conduct Sheet.
4. List of witnesses for the prosecution and defence, with their present stations.
5. Statement as to the character and service of the accused on A.F. B 296.

This last-named document contains the following information:—

(1) A summary of the entries (if any) in the accused's Company Conduct Sheet, distinguishing between those within the last twelve months and since enlistment; and instances of gallant conduct (if any).

(2) Whether the accused has been previously convicted. If so, the previous convictions are set out in a schedule attached to the Statement.

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(3) Whether he is under sentence already, and, if so, for how long.

(4) How long he has been awaiting trial.

(5) His age, date of attestation, service towards discharge or transfer to Reserve; service towards pension; any decorations the Court can forfeit; (if a Warrant Officer or Non-Commissioned Officer), how long he has served in the different ranks.

The name of the Officer who investigated the case is stated, in order that he may not be detailed as a member of the Court.

The certificate at the foot of the application, to the effect that the accused is in a good state of health or otherwise, must be signed by the Medical Officer.

Man., p. 605; R.P., App. II., p. 574, 575; A.F., B. 116.

If the accused elected to be tried instead of submitting to a summary award of his Commanding Officer, it should be so stated on the application. **Man., p. 582.**

The time which should elapse between the Commanding Officer's remanding the accused for trial and the issue of the order for the assembly of a Regimental Court-Martial, or forwarding the application for a higher Court, should not, under ordinary circumstances, exceed thirty-six hours. **R.P., 5 (B).**

Duties of Convening Officer.

On receiving an application for a Court-Martial, the Convening Officer should satisfy himself that the charge sheet discloses an offence against the Army Act and the evidence in the summary justifies a trial. He should also be careful that the proposed Court has jurisdiction to try the accused. He may convene either a General Court-Martial or District Court-Martial if he has a warrant enabling him to do so, or he may refer the case to superior authority, or he may send back the application telling the Commanding Officer to dispose of it summarily or by Regimental Court-Martial. A Non-Commissioned Officer above the rank of Corporal is only to be tried by a Regimental Court-Martial when the

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General Officer Commanding decides that a higher Court cannot, having due regard to the public service, be convened.

R.P., 17; K.R., 438, 548, 549.

If he decides to convene a Court, he must issue the necessary order (for Forms *vide* R.P., App. II., p. 558 *et seq.*); he must appoint the President by name, and detail the necessary number of Officers and any waiting Members he may think expedient; he will deal with the various documents sent in with the application for trial as follows:—

One copy of the charge sheet will be filed with the application.

The other copy of the charge sheet and the summary of evidence will be sent to the President.

The soldier's conduct sheet, the list of witnesses, and the statement as to the accused's character and service, will be sent back to his Corps.

ss. 47 (3), 48 (9), and *notes*; **R.P., 17; Man., p. 604.**

The Convening Officer is responsible for the legality of the charge sheet and that a duly qualified Officer is named to act as Prosecutor; if he has no one serving under his command fit for the duty, he must apply to superior authority for one. **K.R., 573.**

As already noted, if more than fifteen days in the United Kingdom, or thirty days elsewhere, elapse between the receipt of an application for a Court-Martial and the disposal of the case, either by the assembly of the Court or otherwise, the General Officer must report the circumstances to the Army Council, or in India to the Commander-in-Chief in India. **R.P., 17** (c).

Defence.

An accused person is to be given every facility for preparing his defence, and is to be allowed free communication with his witnesses and any friend or legal adviser he wishes to consult. He is to be warned for trial by an Officer, not less than eighteen hours before trial in the case of a Regimental

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Court-Martial, or twenty-four hours in the case of any other Court-Martial. The Officer warning him is to give him a copy of the charge sheet, and will read it to him, and, if necessary, explain it. A copy of the summary of evidence is also to be given to him gratis, and he is to be asked if he wishes any witnesses summoned for his defence. If he gives their names, reasonable steps will be taken for securing their attendance, otherwise the onus of procuring them will rest on him. A list of the Officers who are to form the Court, together with any waiting Members, will be given to him, if he so desires, as soon as they have been detailed; in the case of a General Court-Martial, this list would be given in any case. If he is to be jointly tried, he must be so informed, to give him an opportunity of claiming separate trial if he has grounds for such claim. If it is intended to employ Counsel for the prosecution, he must be so informed at least seven days before the trial, unless he has given notice that he intends to employ Counsel for his defence. If a Judge-Advocate has been appointed, he can consult him on any point of law.

R.P., 13, 14 (and *note*), **15, 89** (B), **103** (A).

QUESTIONS.

1. Describe any peculiarities that exist with regard to the trial and punishment of the offences of desertion and fraudulent enlistment.
2. Under what circumstances is the document known as the "Summary of Evidence" prepared? Explain fully the manner in which, and by whom, it is prepared, and the uses to which it is, or might be, put, prior to a trial by Court-Martial.
3. Describe the "Summary of Evidence," and distinguish between it and the "Abstract of Evidence" referred to in the Rules of Procedure.
4. Describe in full detail an ordinary charge sheet; and explain why more than one charge sheet is sometimes made out when an accused is to be brought before a Court-Martial.

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5. A soldier on parade, on being reproved by his Captain, throws his rifle violently to the ground; the Captain orders him to pick it up, and repeats the order. The soldier does not obey, but folds his arms, and says, "I won't soldier at all if I'm bullied like this." The rifle is damaged to the value of 4s. Draw up a complete charge sheet for his trial by Court-Martial.
6. Evidence tends to prove that Private A. sold to a civilian the following articles, viz., one pair of his regimental trousers, the cape belonging to his great-coat, and two shirts belonging to Private B., which Private A. had been seen to take stealthily out of B.'s valise. Draw up a charge sheet for the offences disclosed, in proper form, to be laid before a Court-Martial. (Minor particulars not herein given should be supplied from invention when necessary.)
7. A soldier of the Special Reserve, out for training, is to be tried by Court-Martial for drunkenness. Draw out a complete charge sheet, filling in the form with supposititious details as to name, date, place, etc.
8. In a charge of "Losing by neglect, equipment, clothing, and regimental necessaries," the value of the articles lost is sometimes inserted and sometimes omitted. Explain why this is the case.
9. Give the "statement of offence" and the section of the Army Act applicable to the following cases:—

   Private A., serving in the Yorkshire Regiment, is discovered to be a deserter from the Navy.

   Private B., in the Hampshire Regiment, is recognised as an Army reservist, and it is known that he has been drawing his reserve pay.

   Private C., in the Bristol Regiment, is found in possession of a watch, the property of a soldier who sleeps in the same barrack room.

   Gunner D., of the Royal Artillery, is apprehended while climbing over the barrack wall in plain clothes.
10. How would the statement of the offence be worded in the case of theft from (1) a soldier, (2) a civilian?

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11. Explain what is meant by alternative charges. Would such charges be placed on one charge sheet or separate charge sheets? State the circumstances under which, as a general rule, charges would be entered on separate charge sheets.

12. State the regulations as to the inserting on a charge sheet the value of articles lost or damaged through the commission of the offence charged.

13. What is meant by the summary of evidence? How is the summary affected by the fact that the accused gave evidence himself at the investigation previously held?

14. No. 245, Lance-Corporal X., of the 2nd Bn. Essex Regiment, is sent to the post office to forward an official telegram, and is given 3s. by Captain Y. of his regiment, to pay for it. He does not send the telegram, and "embezzles the public money" given to him. Frame a complete charge sheet to deal with the case, and state the maximum punishment that can be awarded for the offence.

15. A Commanding Officer, after investigating a charge against a soldier, remands him for trial by District Court-Martial. Describe the several steps now taken with reference to—

    (*a*) Making the application for his trial.

    (*b*) Warning the accused and giving him various facilities to meet his trial.

16. Who is responsible for the legality of the charge sheet? Under what circumstances would alternative charges be framed?

17. Describe the warning of the accused for trial in a case when every possible information is afforded him.

18. State the regulations in force which prevent a soldier being unduly detained in custody pending the assembly of a District Court-Martial to deal with his case.

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CHAPTER VIII.

COURTS-MARTIAL: THEIR DESCRIPTION, COMPOSITION, AND POWERS.

There are three ordinary kinds of Courts-Martial, the *General*, the *District*, and the *Regimental*. There is also another Court, which is only assembled on active service, or in places beyond the seas, when a General Court-Martial cannot be convened; this is called the *Field General Court-Martial*, and will be dealt with in Chapter XVIII. We will consider each of the other Courts in order.

(A) General Court-Martial.

Convening Authority.—The King or some qualified Officer having a warrant authorizing him to convene such a Court. This warrant may come immediately from the King or from some Officer authorized to delegate his authority. A "qualified Officer" means the *Commander-in-Chief, any Commanding Officer not below the rank of Field Officer, the Lord Lieutenant of Ireland, the Governor-General of India, or the Governor of a Colony, and, in special cases abroad, an Officer of the rank of Captain.

ss. 48 (1), 122 (1), (6).

For forms of Warrants *vide* Man., pp. 599—604.

For the trial of a Marine, an Admiralty warrant is also necessary, except in special cases. **s. 179 (1).**

Legal Minimum.—In the United Kingdom, India, Malta, or Gibraltar, nine; elsewhere, five. **s. 48 (3).**

Service required.—Each Officer must have held a commission for not less than three years. A commission in the Militia is reckoned in this period. **s. 48 (*b*).**

Corps of Members.—They must not all belong to the same Regiment or Battalion, unless the Convening Officer

* *Vide* Note on p. 10.

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certifies in the order convening the Court that, having due regard to the public service, other Officers are not available. **R.P. 20 (A).**

Rank of President.—Not below Field Officer, unless the Convening Officer is below that rank or certifies in the order convening the Court that, having due regard to the public service, a Field Officer is not available, when he may be a Captain. If a General Officer or full Colonel is available as President, no Officer of inferior rank should be detailed. **s. 48 (9); K.R., 578.**

Rank of Members.—Five must not be below the rank of Captain. When an Officer is being tried, all the members should be of equal or superior rank to the accused; and in no case may an Officer under the rank of Captain sit on a Court for the trial of a Field Officer. If a Commanding Officer is being tried, as many members as possible are to be Officers who have held, or are holding, similar commands to that held by the accused.

s. 48 (3), (7); R.P., 21 (B); K.R., 578.

Jurisdiction.—All persons subject to military law.

s. 48 (6).

Powers of Punishment.—Death or any less punishment.

s. 48 (6).

Confirming Authority.—The King in the United Kingdom; elsewhere an Officer having a warrant authorizing him to confirm, whether such warrant comes immediately from the King or from some Officer authorized to delegate his authority. Provided that by the warrants now in force no sentence of death, penal servitude, cashiering, or dismissal, passed on an Officer, can be confirmed by anyone but the King or the Commander-in-Chief in India.

s. 54 (1*b*); Man., pp. 599—602.

(B) District Court-Martial.

Convening Authority.—An Officer authorized to convene a General Court-Martial, or an Officer not below the rank of Captain authorized to convene a District Court-Martial by a warrant from such Officer. **ss. 48 (2), 123 (1).**

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For form of Warrant *vide* Man., p. 603.

Legal Minimum —Three is the number fixed by the Act ; but in doubtful or difficult cases, five should, if possible, be detailed. **s. 48 (4) ; K.R. 576.**

Service required.—Each Officer must have held a commission for not less than two years. **s. 48 (4).**

Corps of Members.—They must not all belong to the same Regiment or Battalion, unless the Convening Officer certifies in the order convening the Court that, having due regard to the public service, other Officers are not available. **R.P., 20 (A).**

Rank of President.—Not below Field Officer, unless the Convening Officer is below that rank or certifies in the order convening the Court that, having due regard to the public service, a Field Officer is not available, when he may be a Captain ; or if the Convening Officer certifies a Captain is not available, he may be a Subaltern ; except for the trial of a Warrant Officer, when he cannot be under the rank of Captain. **ss. 48 (9), 182 (4).**

Rank of Members.—When the Court consists of only three members not more than one should be a Subaltern. **K.R., 576.**

Jurisdiction.—All persons subject to military law, except Officers and Warrant Officers holding honorary commissions. **ss. 48 (6), 190 (4).**

Powers of Punishment.—Imprisonment with, or without, hard labour not exceeding two years, or any less punishment ; except in the case of Warrant Officers, when the only punishments this Court can inflict are :—Forfeitures ; fines; stoppages ; dismissal ; reduction to the bottom or any other place in his rank, or to an inferior class of Warrant Officer (if any) ; or reduction to a lower grade, or, if originally enlisted as a soldier, to the ranks. **ss. 48 (6), 182 (2).**

Confirming Authority.—An Officer authorized to confirm a General Court-Martial, or an Officer authorized to confirm a District Court-Martial by a warrant from such Officer. **s. 54 (1*c*) ; Man., p. 604.**

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(c) Regimental Court-Martial.

Convening Authority.—Any Officer authorized to convene a General Court-Martial or District Court-Martial, or any Commanding Officer not below the rank of Captain; or, on board ship, a Commanding Officer of any rank. No warrant is required. **s. 47 (1).**

Legal Minimum.—Three Officers. **s. 47 (2).**

Service required.—Each Officer must have held a commission for not less than one year. **s. 47 (2)** and *note.*

Corps of Members.—May belong to the same or different Corps. **s. 50 (1)**

Rank of President.—Not below Captain, except on the line of march, or on board ship, or unless the Convening Officer certifies in the order convening the Court that, having due regard to the public service, a Captain is not available, when he can be of any rank. **s. 47 (4).**

Jurisdiction.—Cannot try an Officer, a Warrant Officer, or a person not belonging to His Majesty's Forces. A Non-Commissioned Officer above the rank of Corporal is only to be tried by this Court if the General Officer Commanding decides that it is not practicable to convene a higher Court. **ss. 47 (5), 182 (1), 184 (2); K.R., 438.**

Offences under ss. 17, 18 (4) or (5), or 41 are not to be dealt with by Regimental Court-Martial. **K.R., 583 (ii.)**

Powers of Punishment.—Detention not exceeding forty-two days, or any less punishment, except discharge with ignominy or forfeitures.
ss. 44 (11), 47 (5); R.W., 1022, 1043, 1065, 1160.

Confirming Authority.—The Convening Officer or any Officer having power to convene such a Court at the time of the submission of the finding and sentence. **s. 54 (1*a*).**

Whenever a member of the Auxiliary Forces is being tried by either of these Courts, at least one Member of the Court should, if possible, belong to that branch of the Auxiliary Forces to which the accused belongs. The Adjutant of a Corps of the Auxiliary Forces is held to be an Officer of the Corps for this purpose. **R.P. 20 (b)** and *note.*

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QUESTIONS.

1. By whom may the several Courts-Martial be convened, and from what sources do the Convening Officers derive their authority?
2. State the regulations as to the numbers, army service, and corps, of members of General, District, and Regimental Courts-Martial.
3. Enumerate the punishments which may be awarded to a soldier by the sentence of a General Court-Martial.
4. Enumerate the punishments that can be awarded by a District Court-Martial, and point out the cases in which the said punishments can be combined.
5. The composition of a Court-Martial is in some cases affected by the position of the accused. State the regulations that must be observed in detailing the members of a Court-Martial for the trial of (1) a Commanding Officer, (2) a Warrant Officer not holding an honorary commission, (3) a Member of the Territorial Force, (4) a camp follower.
6. Describe the legal minimum, composition, the requisite rank of the President, the jurisdiction, and the powers of punishment of—
   (*a*) A District Court-Martial.
   (*b*) A Regimental Court-Martial.
7. State the regulations that govern the rank of President of General, District, and Regimental Courts-Martial.
8. State the regulations as to the rank and service of the President and members of a Court-Martial assembled for the trial of a Commissioned Officer.
9. Why is a Regimental Court-Martial now seldom assembled? By virtue of what authority is such a Court convened, and what are its powers of punishment?
10. How does the position of a Warrant Officer differ from that of a Non-Commissioned Officer in respect of his being tried and punished for an offence by Court-Martial?
11. Can a Regimental Court-Martial try a civil offence?

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CHAPTER IX.

JURISDICTION.

All Officers and soldiers remain subject to the ordinary law, and can be proceeded against in the Civil Courts for offences against that law; if, however, they have already been sentenced by Court-Martial to punishment for the offence, the Civil Court must, in awarding punishment, take into consideration any punishment already suffered. If an offender has been convicted or acquitted, by either a Court-Martial or a Civil Court, of any offence, he cannot be tried again by Court-Martial for the same offence. If, however, the first Court-Martial was illegally constituted, or the Proceedings were not confirmed, then there has been in law no previous conviction, and the prisoner can be tried again. Where a conviction has been quashed on the ground of the Court being illegally constituted, the prisoner should not usually be tried again, and if re-tried the sentence of the second Court should as a rule be remitted, or in any case the Confirming Officer should see that it does not exceed the first sentence, less any part of the previous sentence already undergone. A Non-Commissioned Officer who has been convicted by a Civil Court of any offence, though he cannot be tried and reduced by Court-Martial for the same offence, can, however, be reduced by order of the *Commander-in-Chief, or the Commander-in-Chief in India, if the Brigade Commander considers such course advisable. If he is only an acting Non-Commissioned Officer, the Commanding Officer can take away his acting rank.

ss. 157 (and *note*), **162** (1), (2), (6), **183** (2), (*c*); **K.R., 506.**

An offender may be tried by Court-Martial at any place within the jurisdiction of an Officer authorized to convene General Courts-Martial, although the offence was not committed at that place, but he cannot be sentenced to any

* *Vide* **Note on p. 10.**

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severer punishment than he was liable to at the place where the offence was committed. **ss. 159, 160.**

No person can be tried by Court-Martial for an offence against the Army Act which was committed more than three years before the date of trial, except the offence is mutiny, desertion, or fraudulent enlistment. If a soldier has served in an exemplary manner for three years, *i.e.*, without an entry in his regimental conduct sheet, he cannot be tried for desertion (other than on active service), or for fraudulent enlistment committed before the commencement of such exemplary service; but if the offence was fraudulent enlistment, all service prior to such enlistment will be forfeited. The Secretary of State may, however, restore any or all of this service under the conditions stated on p. 25. **s. 161; K.R., 489.**

Illustrations.

1. On the 3rd March, 1908, it is discovered that Serjeant A. embezzled £10 January, 1905. He is not liable to trial.
2. On the 15th April, 1908, it is discovered that Private B. fraudulently enlisted on the 4th January, 1905, thereby obtaining a free kit. He has not been three years clear in his Regimental Conduct Sheet. He is liable to trial for the fraudulent enlistment, but not for obtaining the kit.
3. Private C. is apprehended on the 23rd May, 1908, for having deserted on the 15th September, 1904, when he was deficient of his kit. He can be tried for the desertion, but not for the deficiency of kit.
4. Private D., having caused a mutiny in his company on the 26th October, 1904, escapes from the guard detention-room, and fraudulently enlists into another regiment on the 13th November, 1904. He serves without an entry in his Regimental Conduct Sheet till the 20th June, 1908, when he is recognised by his former Colour-Serjeant. He can be tried for the mutiny, but not for the fraudulent enlistment or desertion.

When a person subject to military law commits an offence, he can be kept in military custody and tried and punished, even though he or his Corps has ceased to be subject to military law. He must, however, be tried within three months of ceasing to be subject, unless the offence was mutiny, desertion, or fraudulent enlistment, in which case he remains liable to trial as just stated. When a soldier has been sentenced by Court-Martial to penal servitude or imprisonment, he still remains liable to the Army Act during the term of his punishment, notwithstanding he has been discharged from the Service, and can be punished accordingly. **s. 158.**

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Illustrations.

1. Colour-Serjeant A. is discharged to pension, and immediately afterwards a serious defalcation in his last Pay and Mess Book is discovered. If he can be apprehended he is liable to trial any time within three months from date of discharge.
2. A soldier of a battalion of the Territorial Force is dismissed from annual training, and it is discovered that when employed as mess waiter he stole some mess property; he is liable to trial any time within three months of the date of dismissal. **T.F.R. 141.**

But notwithstanding the above rules, proceedings under the Reserve Forces Act, 1882, may be taken against a man of the Army Reserve, whether his reserve service has expired or not, at any time within two months after the offence became known to his Commanding Officer; or, if he is not then apprehended, within two months of his apprehension. **R.F. Act, s. 26.**

The same provision is made under the Territorial and Reserve Forces Act, 1907, for the trial of a man of the Territorial Force. **T. & R.F. Act, s. 25 (2).**

QUESTION.

1. A soldier, on completion of his service with the Colours, passes into the Army Reserve. To what extent is he still liable to trial and punishment for an offence committed while he was serving with the Regular Forces?

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CHAPTER X.

COURT-MARTIAL PROCEDURE.

In this chapter the procedure of the ordinary Courts-Martial will be considered; the variations from this procedure which are adopted in the case of a Field General Court-Martial will be pointed out in Chapter XVIII.

The proceedings are written on an Army Form, and must be free from erasures and interlineations as far as possible; any such must be verified by the initials of the President, who, unless there is a Judge-Advocate, is responsible for their accuracy, custody, and transmission to the authority prescribed in the order convening the Court. If there is a Judge-Advocate, this responsibility devolves on him. **R.P.,** **95** (A) and *note*, **96, 97.** The members take their seats according to army rank, except in the case of a Regimental Court-Martial, composed entirely of Officers of the same Corps, when they will sit according to their regimental seniority. **R.P., 58.** The names of the President and members are recorded in the Proceedings in order of seniority.

President: Duties of.

The duties of the President are to see that the trial is properly conducted, and justice administered, and that the accused does not suffer any disadvantage from his ignorance of procedure; to administer the oath to the members of the Court; to procure any witnesses required, who have not already been summoned by the Convening Officer; to put any questions to the witnesses, which the Court may ask; to close the Court when necessary; to collect the votes of the members on any question to be decided by the Court; and if the votes are equal to give a casting vote, as explained below; to initial any corrections in the Proceedings; to be responsible for their accuracy and safe custody; to sign the

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same, and transmit them, as directed, at the end of the trial. If there is a Judge-Advocate, some of these duties devolve on him, as stated below. **s. 53 (5), (8); R.P., 26, 45, 50, 59, 69 (B), 78, 85 (A), 95 (A), and *note*, 96.**

JUDGE-ADVOCATE.

A Judge-Advocate must be appointed at every General Court-Martial, and may be appointed at a District Court-Martial, but in practice this is seldom done. At trials in the United Kingdom, he is appointed by a warrant from the Judge-Advocate-General; abroad, the warrants issued to Officers, authorizing them to convene General Courts-Martial, give them power also to appoint a Judge-Advocate. This official is not a Member of the Court, but merely a legal assessor to advise the Court on points of law, and to act as the ministerial officer of the Court. He is usually an Officer selected for his special knowledge of military law, but he need not necessarily be a person subject to military law. Any grounds which would disqualify an Officer from being a member of the Court, as presently explained, would also disqualify him from acting as Judge-Advocate at that trial. If the Judge-Advocate dies, or is incapacitated from attending during the trial, another fit person may be appointed; but the Court cannot go on in the absence of a Judge-Advocate.

R.P., 101, 102; Man., pp. 599—603.

His *duties* are to advise the Prosecutor, or the accused, on any point of law he may submit; to represent the Judge Advocate-General; to inform the Court of any defect in the charge, or any irregularity in the proceedings; to remain entirely impartial; to take care the accused suffers no disadvantage through ignorance; to swear the Court and all witnesses, and summon any not summoned by the Convening Officer; to sum up at the conclusion of the case, unless he and the Court consider it unnecessary; to keep the record of the proceedings, and sign and transmit them to the proper authority.

R.P., 26, 45, 50, 78, 82 (A), 85 (A), 95 (A), 96, 103.

The Court should be guided by any opinion given by the Judge-Advocate on any point of law, and should not over-

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rule it, except for weighty reasons. The Court are responsible for their decisions, but they may incur great risk by disregarding his opinion on any legal point; they may, if they wish, record on the Proceedings that they have decided in consequence of his opinion. **R.P., 103** (F).

Preliminary Proceedings.

The time at which the Court opens is entered on the Proceedings. Courts sit at such hours between 6 a.m. and 6 p.m., as may be ordered; usually between 10 a.m. and 4 p.m., or 11 a.m. and 5 p.m.; they should not be required to sit more than six, or, at most, eight hours in a day, because all parties would become weary. If the Court think it necessary, they may continue their sitting beyond 6 p.m., but must enter their reason for doing so on the Proceedings. In cases of necessity, a Court may sit at any hour of the day or night, and on Sunday, Christmas Day, or Good Friday; but only if the Convening Officer certifies that military exigencies require it. Once the accused has been arraigned, the Court should continue the trial from day to day, but they may adjourn from time to time, when necessary, under the Act or Rules of Procedure. **R.P., 64, 65** (A); **K.R., 579.**

The Court must adjourn in the absence of the President or Judge-Advocate, or if reduced below the legal minimum, or if the accused is unable to attend. They may also adjourn if the number detailed are not present when the Court assembles, or to procure the attendance of a witness, or to allow the accused further opportunity of preparing his cross-examination of a witness.

s. 53; R.P., 18, 65 (B), **79, 84** (B).

The Court may also adjourn to view any place, but they must take the accused with them. **s. 53 (7); R.P., 63** (B).

The order convening the Court is read, is marked so as to identify it, signed by the President, and attached to the Proceedings. It may here be remarked that all documents which are intended to form part of the Proceedings must be similarly marked and signed, and, with the exception of the charge sheet, attached at the end of the Proceedings in the order in which they are produced before the Court. The

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charge sheet is inserted after page B in the Proceedings. If the original document cannot be spared for this purpose, a copy must be compared with the original, and so attached. **Man., p. 584.**

The charge sheet and summary of evidence are laid before the Court by the President, to whom they have been sent by the Convening Officer. **R.P., 17 (E).**

The Court now satisfy themselves as to their (*a*) legal constitution and (*b*) jurisdiction.

As regards (*a*), they must see that :—

(i.) So far as they can ascertain they have been properly convened.

(ii.) The Court consists of not less than the legal minimum ; and, except as stated below, of not less than the number detailed.

(iii.) Each of the Officers is "eligible," and not "disqualified."

(iv.) The President is of required rank and duly appointed.

(v.) In the case of a General Court-Martial, the Officers are of required rank.

(vi.) If there is a Judge-Advocate, he has been duly appointed, and is not disqualified.

If not satisfied, they must adjourn, and report to the Convening Authority. **R.P., 22.**

If on assembly it is found that the number detailed is not available, the Court should ordinarily adjourn for fresh members to be appointed ; but if they consider it advisable to proceed they may do so, recording their reasons, provided always they are not reduced below the legal minimum. **R.P., 18.**

An Officer is not *eligible* to sit on a Court-Martial unless he is subject to military law, and has the required service for the particular description of Court.

An Officer is *disqualified* from sitting on any particular trial if he is :—

(i.) The Prosecutor.

(ii.) A witness for the prosecution.

(iii.) The Convening Officer.

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(iv.) The Confirming Officer.
(v.) The accused's Commanding Officer.
(vi.) The Officer who investigated the case.
(vii.) The accused's Squadron or Company Commander who made the preliminary inquiry into the case.
(viii.) The Officer who took the summary of evidence.
(ix.) A Member of a Court of Inquiry which investigated the facts of the case.
(x.) Personally interested in the case.

s. 50 (2), (3), 54 (4) ; R.P., 19 (B).

Whenever a Court of Inquiry has been held respecting a matter on which a charge is founded, the President is to enter in red ink and sign a foot-note to the effect that he has compared the names of the Officers who served on the Court of Inquiry with those detailed to serve on the Court.

R.P., App. II., p. 561.

Illustrations.

1. Private A. is for disposal at orderly-room, his Captain, B., inquires into the facts of the case ; he is brought up before Major C., who, in the absence of Colonel D., the Commanding Officer, is taking orderly-room that day. He remands him for trial, and the summary of evidence is prepared by the Adjutant, Lieutenant E. Colonel D., Major C , Captain B. and Lieutenant E. are all disqualified from sitting on the Court.
2. Private A. is absent for twenty-one days. Lieutenant B. is a member of the Court of Inquiry held to record his illegal absence. A. is subsequently apprehended and tried for desertion. Lieutenant B. is disqualified from sitting on the Court.
3. Private A. attacks Serjeant B. and injures him seriously. A Court of Inquiry is held to record the circumstances under which Serjeant B. was injured, of which Court, Major C. is President. A. is tried by Court-Martial for striking his superior Officer. Major C. is disqualified from serving on the Court.
4. A mess waiter is tried for stealing a piece of plate belonging to the Officers' Mess ; every Officer of that Regiment is disqualified from sitting on the Court.

As regards (*b*) they must see that :—

(i.) The charge appears to be laid against a person subject to military law and to the jurisdiction of the Court.

(ii.) Each charge discloses an offence against the Act and is properly framed.

If not satisfied, they must adjourn and report to the Convening Officer.

R.P., 23.

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Prosecutor.

The *Prosecutor* takes his place, and his name is recorded in the Proceedings. He must be subject to military law, and is, in practice, an Officer. He is an Officer of justice, whose duty it is to assist the Court in determining the truth, not to obtain a conviction unfairly; he must act fairly towards the accused, and bring out in evidence any facts that tend in favour of the accused, as well as those against him. It is the duty of the Court to stop him if he refers to any irrelevant matter or indulges in any undue violence of language. He informs the Court, immediately before the arraignment, if the accused has elected to be tried. It is also his duty to inform the Court if the accused will suffer any additional punishment consequential to the finding besides that awarded by the sentence of the Court; *e.g.*, forfeiture of corps pay. He cannot be objected to by the accused. He can make an opening address; he examines the witnesses for the prosecution, and cross-examines those for the defence; if the accused does not call witnesses in his defence, the Prosecutor may address the Court a second time for the purpose of summing up; if the accused has called witnesses, he may reply to the accused's case for the defence. He should not, except on active service, give evidence, except to prove a date or other formal matter, or to produce documents. If it is necessary for him to give evidence, he must be sworn and should be the first witness.

R.P., 24, 25 (B), **39** (and *note*), **40, 41, 46** (E), **60**; **K.R., 575.**

If the accused has not already been present during these preliminary proceedings, he is now brought before the Court. Except during such times as the Court is closed for the consideration of any question, all the proceedings must take place in open Court and in the presence of the accused.

R.P., 63.

Counsel.

Either the Prosecutor or the accused may have *Counsel* to assist him at a General Court-Martial or a District Court-Martial, but abroad, only with the sanction of the Army Council (or Commander-in-Chief in India), or the Convening Authority. At home, Counsel will not be engaged for the prosecution without the sanction of the Army Council.

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The accused must usually give seven days' notice of his intention to employ Counsel, and similarly seven days' notice must be given to him of the intention to employ Counsel for the prosecution. By the term "Counsel" is meant a barrister, advocate, solicitor, or law agent. Counsel are bound by the Rules of Procedure, and if they are guilty of unprofessional conduct can be reported to a Civil Court. A Counsel has all the rights and duties of the party for whom he appears. The accused may also be assisted by a "friend"; and if this friend be an Officer subject to military law, he has the rights of a Counsel; otherwise he can only advise the accused, but cannot himself address the Court or examine witnesses. **s. 129; R.P., 87-93; K.R. 574.**

Challenge.

The names of the President and members are now read over in the hearing of the accused, and they severally answer to their names, and the accused is then asked whether he objects to be tried by any of them. He cannot object to the whole Court collectively, though he can object to every individual Officer on it. If he objects to the President, the objection against him will first be considered; if to members, other than the President, the objection against the junior member will first be disposed of. The Officer objected to withdraws and takes no part in deciding the objection. The accused states the grounds of his objection, and may call witnesses in support; but they do not give evidence on oath, as the Court, not being yet sworn, has no power to administer an oath. The Prosecutor can call witnesses to rebut the evidence adduced by the accused. The Court then come to their decision in closed Court. If the objection is to the President, and one-third of the members are in favour of it, it is allowed; if to a member, it is not allowed unless one-half are in favour of it. If the Court disallow the objection, their decision is communicated to the accused, and the trial proceeds. If an objection against the President is allowed, the senior member will adjourn the Court and report to the Convening Officer, who will appoint a fresh President. If an objection against a member is allowed, and there are waiting members, one of them will be

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taken ; if there are no waiting members, and the Court is reduced below the legal minimum, they must adjourn for a fresh member to be detailed, otherwise, if not below the legal minimum, they may go on with the reduced numbers if they think it expedient, as already noted. Whenever a Court adjourns for a fresh President or members to be appointed, the Convening Officer may, if he think fit, convene a fresh Court instead. No new member can be added to a Court once the trial has commenced. The accused must be given an opportunity of challenging any Officers detailed to take the place of those objected to.

ss. 51, 53 (1) ; R.P., 18, 25.

The Court are then sworn. If there is a Judge-Advocate, he first administers the oath to the President, and then to all the members collectively ; if there is no Judge-Advocate, the President first administers the oath to the members collectively, and then one of the members does so to the President. The oath is administered by being read by the person administering it, and by those who are being sworn repeating the words, " So help me, God," and kissing the Testament, which they hold in their ungloved right hand. All stand up while the oath is being administered, all those present in Court, except those on duty under arms, removing their head-dresses.

R.P., 26, and *note* to **R.P., 30.**

The obligations undertaken by the Court on being sworn are first, those of a jury, *i.e.*, that they will well and truly try the accused according to the evidence ; next, those of a judge, *i.e.*, that they will impartially administer justice according to the Army Act ; and lastly, that of secrecy, *i.e.*, that they will not divulge the sentence before confirmation, or the vote of any member at any time unless required by law to do so. **s. 52.**

If there is a Judge-Advocate he is then sworn to secrecy; and if the services of a shorthand writer or interpreter are necessary, these officials are also sworn to do their duty impartially to the best of their power. The accused is given an opportunity of objecting to either of these last two before they are sworn, but he cannot object to the Judge-Advocate. **R.P., 25 (B), 27 72.**

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Young Officers are required to attend Courts-Martial for the first twelve months after they join the Service, and, if any such are present, they are now sworn to secrecy, as they are allowed to remain in Court when it is closed.

R.P., 27 (B) ; K.R., 572.

If any person who is required to take an oath in connection with a Court-Martial objects on conscientious grounds to do so, or states that it would have no binding effect on his conscience, then he may be permitted to make a solemn declaration instead. This will have the same effect as taking an oath, and he can be punished for falsehood as though he had sworn falsely. In any case, an oath may be administered in such form and with such ceremonies as the person may state will be, according to his religion, binding on him. Abroad, in the case of natives, it will be well to follow the customs adopted in the local Civil Courts.

s. 52 (4) ; R.P., 30 (and *note*).

A Court may be sworn to try any number of accused persons then before it, whether they are to be tried separately or jointly, each having the right to challenge any of the Court before they are sworn. If the accused are to be tried separately, the Court will then proceed with one case, and then take the others in succession afterwards. Any number of accused persons may be jointly tried for an offence they are charged with having committed collectively, but any of them can claim separate trial on the ground that the evidence of one or more of the accused about to be tried with him is material to his defence, and if the Convening Officer or the Court is satisfied that this is so, his claim must be allowed. If they are tried together, each will have a separate right of challenge, will make a separate plea and defence, and the finding and sentence must be separately recorded. **R.P., 15, 71** (and *note*).

Arraignment.

The accused is arraigned by each charge in the charge sheet being read over to him, and his pleading to it. It is usual to order the witnesses out of Court at this stage. If the accused has elected to be tried, instead of being dealt with by his Commanding Officer, the Prosecutor now informs

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the Court of that fact. The accused, on being called on to plead, may object to any charge on the ground that it does not disclose any offence against the Act or is not properly framed, and the Court will decide whether his objection is valid or not. If there appears to be any mistake in the name or description of the accused, the Court can amend the charge sheet at any time during the trial. If, however, the charge is defective in any other way, the Court must, if they have not begun to examine witnesses, adjourn, for the Convening Officer to make the amendment. If they have begun to examine witnesses, the charge sheet cannot be amended at all; but justice can often be done by a special finding.

R.P., 31, 32, 33, App. II., p. 563.

Illustrations.

Private A. is charged with losing by neglect certain articles of his kit, among others, a pair of socks, but the evidence shows that the socks are not deficient; the Court can find him guilty of the charge, "with the exception of one pair of socks."

Private B. is charged with breaking out of barracks on the 12th August, but the evidence shows he did so on the 13th August; the Court can come to a special finding and correct the date in their finding.

Before pleading to a charge, the accused may offer a "*special plea to the jurisdiction of the Court*"; that is, that they have no power to try him at all on any charge whatever. He may adduce evidence in support of this plea, and the Prosecutor can call evidence in reply. If the Court over-rule his objection, they go on with the trial; if they allow it, they will adjourn and report to the Convening Officer; if in doubt as to whether they should allow it, they may adjourn and refer to the Convening Officer for his advice, or, if this delay would be inconvenient, they may record a special decision, and proceed with the trial, subject to their having jurisdiction. The usual grounds for such a plea would be that the accused was not subject to military law, or not amenable to that description of Court, as, for example, if he were a camp follower and the Court were a Regimental Court-Martial. **s. 184 (2); R.P., 23 (A), 34.**

When called on to plead, he may plead "*guilty*" or "*not guilty*." Before recording a plea of "*guilty*," however, the Court must be quite satisfied that the accused fully understands the meaning and consequences of his plea

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and the difference in the procedure which it entails. If they are not satisfied on this point, they will proceed with his trial as though he had pleaded "*not guilty.*" It must be recorded on the Proceedings that this Rule has been adhered to. If he refuses to plead, or does not plead intelligibly, a plea of "*not guilty*" will be recorded.

R.P., 35.

If, when called upon to plead, the accused appears insane, the Court would take evidence as to his mental condition, and if satisfied that he is unfit to take his trial they would find to this effect (*vide* p. 99) and the President would sign the Proceedings and transmit them for confirmation in the usual way, as explained later on. Meanwhile, until the pleasure of His Majesty, as to the disposal of the accused, is known, he must be kept in confinement so as to keep him securely, but is not to be regarded as a criminal.

s. 130; R.P. 57.

The accused may offer a "*plea in bar of trial*" at the same time as his general plea of "*guilty*" or "*not guilty.*" The grounds for such a plea are:—

(i.) That he has been previously acquitted or convicted by a Civil Court or Court-Martial, or dealt with summarily by his Commanding Officer, for the same offence.

(ii.) That the offence has been pardoned or condoned by competent authority.

(iii.) That more than three years have elapsed since the offence was committed, or, in the case of civil offences in respect of which proceedings must be commenced within any shorter time than three years, that then that shorter time has elapsed.

If the Court allow the plea, they will record their finding and adjourn and report to the Convening Officer; if they over-rule the plea, they will go on with the trial. **R.P. 36.**

To be a bar, the previous trial must have been a legal one, by a properly constituted Court, and for the same offence arising out of the same set of facts.

O'Dowd, pp. 165-167.

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Pardon or condonation must be the deliberate act of a person having power to dispose of the offence, acting in his magisterial capacity with a full knowledge of the facts.

O'Dowd, p. 27.

Illustrations.

1. Private A. is convicted of desertion, but the Proceedings are not confirmed; he can be tried again on the same charge. **s. 54 (6).**

2. Private B. is acquitted on a charge of murdering a comrade; he cannot be tried again for the manslaughter of the same man. **Harris, p. 404.**

3. Private C. is charged on the 6th November, 1907, with attempting, on the 13th July, 1907, to have carnal knowledge of a girl of 15 years of age, and pleads in bar of trial that more than three months have elapsed since the offence is alleged to have taken place. His plea must be allowed.

48 & 49 Vict., c. 69, s. 5.

If there are separate charge-sheets, the accused will be arraigned, and the trial proceed separately on each charge sheet up to the finding inclusive. The trials on the several charge sheets will be in such order as the Convening Officer directs. If the Convening Officer thinks fit, he can direct that on the accused being convicted of any charge in any charge sheet, he need not be tried on the other charge sheet or sheets, and the Court will then finish the trial as though there were no other charge sheets. Whenever a charge sheet contains more than one charge, the accused can claim to be tried separately on each charge, on the grounds that he would otherwise be embarrassed in his defence, and if the Court think the claim good they should allow it and proceed accordingly. **R.P., 62.**

When the accused pleads "*guilty*" to some charges and "*not guilty*" to others, in the same charge sheet, the Court will first proceed with the trial of those charges to which he has pleaded "*not guilty.*" If, however, they are *alternative charges*, the Court can enter a plea of "*not guilty*" to those to which he has not pleaded "*guilty*"; or if they think he has pleaded "*guilty*" to the less serious of the alternative charges to avoid the punishment entailed by the graver, they may proceed as though he had not pleaded "*guilty*" to any. **R.P., 37 (A).**

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Illustrations.

1. Private A. is charged with (1) stealing certain property; (2) receiving the same knowing it to have been stolen. He pleads "*guilty*" to the first charge; the Court can enter a plea of "*not guilty*" to the second, and proceed as on a plea of "*guilty*."
2. Colour-Serjeant B. is charged with (1) embezzling certain public money; (2) neglect, to the prejudice of military discipline, in keeping his accounts so negligently that the money had been lost. He pleads "*not guilty*" to the first, and "*guilty*" to the second charge. The Court can proceed as though he had pleaded "*not guilty*" to both.

The accused may at any time withdraw a plea of "*not guilty*" and plead "*guilty*," and if the Court, as already noted, are satisfied he understands what he is doing, they may record the plea and proceed with the remainder of the trial accordingly. **R.P., 38.**

(A) Proceedings on Plea of "Not Guilty."

Prosecution.

The Prosecutor may, if he wishes, make an opening address, or may hand in a written address. If Counsel has been retained for the prosecution, he should make an opening address. **R.P., 39 (A), 90.**

It may here be generally noted that wherever in the Proceedings any addresses are made they may be either oral or written. When the address is oral, only so much of it as the Court think necessary need be recorded, provided that such a record of anything said for the defence must be kept as will enable the Confirming Officer to judge of the defence, and whenever the Prosecutor or the accused requests that any particular matter in his address be recorded, the Court should enter it in the Proceedings. Whenever the address is written, it will be read, marked with some identifying mark, signed by the President, and attached to the Proceedings. **R.P., 95 (D), App. II., p. 561.**

The witnesses for the Prosecution are then called, sworn, and examined by the Prosecutor. **R.P. 39.** Every witness must be sworn by one of the Court, or the Judge-Advocate when there is one; or he may make a solemn declaration under the circumstances before noted. If a witness refuses to be sworn, or to answer questions or produce documents, which he can legally be required to answer or produce,

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he may, if subject to military law, be arrested, in order to be proceeded against under s. 28, and if a civilian, his offence can be certified, by the President, to a Civil Court, who will deal with the contempt as though it had taken place before that Court. **ss. 52 (3), 126 (1) ; R.P., 30, 82** (and *notes*). The evidence of all witnesses is taken down in a narrative form, as nearly as possible in the words used ; but wherever the Prosecutor, accused, Judge-Advocate, or the Court think it material, the exact question and answer are to be recorded *verbatim*. If any objection is made to any evidence, the Court may, if they think fit, record the proposed evidence, and the fact that it had been objected to, and their decision upon the objection. When the examination-in-chief is ended, the accused can cross-examine the witness, who, if necessary, may be re-examined by the Prosecutor. Details as to the method of conducting these various examinations of witnesses will be dealt with in a subsequent Chapter on "Evidence." (*Vide* p. 118 *et seq.*) Any member of the Court or the Judge-Advocate may, with the permission of the Court, ask any witness any questions ; such questions should usually be put after the parties to the trial have finished the examination or cross-examination of the witness. These questions may be put at any time before the second address of the accused, and a witness may be recalled at the request of either party for this purpose, and will be examined on his former oath. The Court may, if they think fit in the interests of justice, call or re-call any witness at any time before the finding. Every question may be put direct to the witness by the person asking it. The evidence of each witness is read to him at the conclusion of his examination, to see that it has been recorded correctly and to give him an opportunity of correcting slips. It should be recorded on the Proceedings that this has been done. The witness will then withdraw, as, except the Prosecutor and the accused, no other witness should be in Court while another witness is under examination. **R.P., 81, 83, 84, 85, 86, 95.**

The examination of all the witnesses for the Prosecution is conducted in a similar manner. The Prosecutor is not bound to call all the witnesses whose evidence is in the summary, but he should call any whom the accused wants

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called, in order to give him an opportunity of cross-examining them. If he wishes to call a witness whose name is not in the summary, he must give reasonable notice to the accused of his intention, or the Court may allow an adjournment to enable the accused to prepare his cross-examination.

After the assembly of the Court, the President is the person to procure the attendance of any witnesses who may be required; if soldiers, they are ordered to attend by the proper Military Authority; if civilians, a summons is served on them by the Police. For form, *vide* R.P., App. II., p. 580.

R.P., 75, 76, 78.

Defence.

At the close of the Prosecution, the accused will be called upon for his defence, and will be informed of his right to give evidence himself, subject to cross-examination, and will be asked whether he wishes to call any witnesses for his defence. The subsequent procedure will vary according to what his replies to these questions are. The different cases will now be considered in turn. **R.P., 40.**

(i.) *The Accused calls Witnesses in Defence.*

The accused can make an opening address; and the rules already noted for the opening address for the Prosecution apply, except that the accused is allowed more latitude in his remarks than would be permissible to the Prosecutor. He may then give evidence himself, if he wishes, and call his other witnesses in turn. The rules for the conduct of the examination of witnesses for the Prosecution apply to those for the Defence, except, of course, they are examined by the accused and cross-examined by the Prosecutor. If the accused wishes to give evidence himself he should usually, but need not necessarily, do so first, before he has heard the other witnesses give their evidence. Unless the Court decides that there are reasons against it (such as his violent conduct), the accused, while giving evidence, will do so from the place where the witnesses stand. After all the evidence for the defence has been taken, the accused can make a second address summing up his case; and, lastly, the

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Prosecutor is entitled to make a second address, replying to the whole case. **R.P., 41** (and *notes*), **60** (C), **80 (2).**

(ii.) *The accused gives evidence himself, but calls no other witnesses (except as to character).*

The accused will give his evidence as above described. The Prosecutor can then make a second address, summing up the evidence for the Prosecution and commenting on the accused's evidence. The accused may then make an address in his defence. He may also call any witnesses as to character. The Prosecutor may rebut this evidence as to character by producing proof of previous convictions, or the accused's Conduct Sheet, and may call witnesses to prove such, but he cannot again address the Court.

R.P., 40 (and *note* B), **86** (C).

(iii.) *The accused calls no witnesses (except as to character).*

The Prosecutor will make his address (if any) at once; but he must not comment on the fact of the accused declining to give evidence. The accused can then make an address in his defence and call any witnesses as to character as in the last case, and the Prosecutor has the same right of rebutting any such evidence. **R.P., 40** (and *note* B).

If the accused is assisted by Counsel, or an Officer having the rights of Counsel, and does not wish to give evidence himself, but wishes to give his own account of what happened, he will do so at the close of the prosecution, and before any address made by such Counsel. His address, like all others, can be oral or written, but he is not sworn, and no question may be put to him by the Court or any other person. If he makes such a statement, the procedure will be the same as in (i.) above. **R.P., 94.**

At the conclusion of the whole case, the Judge-Advocate, if there is one, will sum up, unless he and the Court agree that a summing up is unnecessary, which decision must be entered on the Proceedings. After this, no other address will be allowed, and the Court will be closed to consider their finding. **R.P., 42, 43** (A), **103** (E).

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Finding.

Each member must give his opinion on each charge, commencing with the junior. A majority of the Court decides, but if the votes are equal, the accused is given the benefit of the doubt, and acquitted. If this acquittal relates to all the charges in a charge-sheet, the President dates and signs the Proceedings, and the accused is brought in, and the finding read to him in open Court, and he is released at once.

s. 53 (8); R.P., 43 (B), **45, 69.**

The finding will be recorded as a finding of "*Guilty*," "*Not Guilty*," or "*Not Guilty and honourably acquit him of the same.*" This last formula, however, should only be used when the offence charged against the accused is disgraceful and such as to tarnish his reputation, and when the accused has come through the ordeal of the trial without the least stain on his character.

The Court may also record a "Special Finding." The most usual cases for this are—(1) when they find the facts proved in evidence differ from the particulars in the charge, but that the difference is not so material as to have prejudiced the accused in his defence; (2) under the provisions of s. 56 of the Army Act, which allows a Court to find a person, charged with certain offences, guilty of other cognate offences therein named; (3) when there are alternative charges, and the Court are in doubt as to which charge the facts proved amount to, they may refer to the Confirming Authority for an opinion, or, if this is impossible, may come to a finding of facts and declare the accused guilty of whichever charge these facts in law constitute; (4) they may find the accused guilty, but insane at the time he committed the offence; (5) they may find that by reason of insanity the accused is unfit to take his trial.

ss. 56, 130; R.P., 44 (and *notes*), **57** (A).

Illustrations.

1. Private A. is charged with selling his tunic, two shirts, and a towel. There is no evidence to show that he sold the towel. The Court can find him "Guilty of the charge with the exception of one towel."

2. Private B. is charged with striking Serjeant C. with a poker. The evidence shows that he struck him, but the instrument was a stick and not a poker. The Court can find him "Guilty of the charge, with the exception that he struck Serjeant C. with a stick and not a poker."

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3. Corporal D. is charged with desertion. He calls evidence to show that he stopped away to nurse a sick wife, and that as soon as she was better he returned and surrendered himself. The Court can find him "Guilty of absence without leave."

4. Serjeant E. is charged with wilfully allowing a soldier in arrest to escape. The evidence shows that the escape was due to the Serjeant forgetting to lock the door of the detention room. The Court can find him "Guilty of negligently allowing a soldier in arrest to escape."

5. Private F. is charged with pawning certain articles of his kit. There is no evidence in proof of the pawning, but only of the fact of the deficiency. The Court can *not* find him "Guilty of losing, by neglect, these articles."

6. Private G. is charged with, 1st, stealing goods the property of a comrade; 2nd, receiving the same knowing them to have been stolen. The evidence proves certain facts as to the accused being in possession of the articles soon after they were missed, but the Court are in doubt as to whether these facts legally amount to theft or receiving stolen goods. They can come to a finding of facts, stating "that the accused did *so and so*, but are in doubt whether these facts constitute, in law, the first charge or second charge, and therefore, they find him guilty of whichever charge these facts amount to."

(B) Proceedings on Plea of "Guilty."

The Court will find the accused "*Guilty*" and will record the finding in the Proceedings. As has already been noted, before accepting the accused's plea of "*Guilty*," the Court must be quite satisfied that he fully understands the nature of such plea. If the trial has proceeded on other charges on the same charge sheet, to which he has pleaded "*Not Guilty*," those charges to which he has already pleaded "*Guilty*" will be read to him again on the Court being re-opened. **R.P., 35 (B).**

The summary of evidence will then be read, marked, and signed by the President, and attached to the Proceedings. If there is no summary, sufficient evidence will be taken to enable the Court to determine their sentence and to allow the Confirming Officer to know the circumstances under which the offence was committed. The accused may then make any statement he wishes in mitigation of punishment, and, if necessary, the Court may allow him to call witnesses in support of his statement. He can also call witnesses as to character. If, from the statement of the accused, or the summary, it appears that after all he did not understand the nature of his plea of "*Guilty*," the Court must alter the record and proceed as though he had pleaded "*Not Guilty*." **R.P., 37.**

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Proceedings on Conviction.

In any case, where the Court has convicted the accused of any charge, whether in consequence of his plea of "*Guilty*," or after a plea of "*Not Guilty*," they will, before determining their sentence, take evidence as to his previous character and service. This evidence is usually given by an Officer, generally the Prosecutor, handing in the "Statement as to character and service of the accused," referred to in Chapter VII. The witness producing this Statement must, of course, be sworn, and he must identify the accused as the person named in the Statement, and declare that he has compared the statements with the Regimental books and found them true extracts. The accused can cross-examine this witness, and can call for the books to be produced, and can call witnesses to rebut the evidence thus given against him, and after all this evidence is finished can address the Court thereon.

R.P., 46.

If the finding of the Court renders the accused liable to any exceptional punishment in addition to that awarded by the Court, the Prosecutor must call attention to this fact, and the Court must enquire into the nature and amount of such extra punishment.

If a local order exists, drawing attention to the unusual prevalence of any offence, and it is desired to bring it to the notice of the Court, the Prosecutor will now produce a certified copy of the order, which will be attached to the Proceedings. **R.P. App. II., p. 575** *et seq.*

Sentence.

The Court will now be closed to consider their sentence. Every member must give his vote for the sentence, even though he had been individually in favour of an acquittal. The sentence must be determined by a majority of the Court, except that sentence of death cannot be passed unless two-thirds at least of the members are in favour of it. When the opinions of the members as to the *nature* of the punishment differ, and various punishments are suggested, the most lenient named must be put to the vote first, and, unless

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a majority of the Court are in favour of that, then the next most lenient, and so on till some one punishment has been determined by a majority. Similarly, if opinions differ as to the *amount* of the punishment to be awarded, a similar course will be adopted ; in each case the voting will begin with the junior member. **s. 48 (8) ; R.P., 69.**

Illustrations.

1. On a General Court-Martial, consisting of nine members, four vote for death, three for penal servitude, and two for imprisonment. The imprisonment will now be first put to the vote and will be negatived, only two voting for it. Now the penal servitude will be put ; naturally, those members who wished to only give imprisonment will vote for it rather than for death, hence five will now vote for it, and, this being an absolute majority of the Court, penal servitude will be the punishment awarded.
2. In fixing the amount, four members vote for ten years, one for seven years, two for five years, and two for three years. The three years will first be put to the vote and will be lost, only two being in favour of this amount ; next, five years will be put, and as this will only obtain four votes, this will be negatived ; next, seven years will be put, and, as five members will now be in favour of this amount, this will be the award.

In determining their sentence, the Court should consider the nature of the offence, and the service and previous character of the accused, and must bear in mind any aggravating or extenuating circumstances, and the prevalence of any particular crime in any Garrison or Corps ; they must also have regard to the climate and locality where the accused will have to undergo his sentence, and to any consequences involved by their finding or sentence, in addition to the punishment awarded by them. Care must be taken to discriminate between offences due to youth or temper and those showing premeditated misconduct. If it is considered necessary to award a sentence of imprisonment, discharge with ignominy should be added. The K.R., para. 583, give rules as to the amount of detention or imprisonment which should usually be awarded for the various offences therein named, and Courts-Martial should not depart from these amounts without good reason. In framing sentences the following rules must be observed :—

(1) Terms of imprisonment or detention, not amounting to six months, will be awarded in *days*.

(2) Terms of one year or two years will be awarded in *years*.

(3) All other terms will be awarded in *months* or *months and days*.

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The word "Month" in a sentence of imprisonment, detention, or field punishment, is interpreted as a "Calendar Month." **s. 190 (35)**, *note*; **R.P., 134** (c); **K.R., 583, 585.**

A Court will not sentence a soldier to forfeitures when he is *convicted* of desertion, fraudulent enlistment, or an offence under s. 17 or 18; or when he is *sentenced* to penal servitude or discharge with ignominy; as in such cases the forfeitures are absolute under the provisions of the Royal Warrant in consequence of the conviction or sentence.

R.W., 1023, 1025, 1044, 1064 (*a*), (*b*), (*c*), **1158**; **Man., p. 577,** (*note*).

The forfeitures which a soldier suffers *as a consequence* of his conviction or sentence, without any award by the Court, may be summarized as follows:—

(i.) Service towards discharge—when convicted of desertion or fraudulent enlistment, or trial for these offences is dispensed with. **s. 79 (2).**

(ii.) Qualifying service, *i.e.*, service towards pension—when convicted of desertion or fraudulent enlistment, or when sentenced to penal servitude or discharge with ignominy. **R.W., 1064** (*a*), (*b*), (*c*).

(iii.) Medals and decorations—when convicted of desertion or fraudulent enlistment, or an offence under s. 17 or 18; or when sentenced by Court-Martial to penal servitude or discharge with ignominy; or by a Civil Court to more than six months imprisonment. If he has the V.C. special reference is made to the King as to forfeiture. **R.W., 1158; K.R., 1742.**

(iv.) Good conduct badges.—*One* for every conviction by Court-Martial or a Civil Court; *all*, when convicted of desertion or fraudulent enlistment or an offence under s. 18; or when sentenced to penal servitude, discharge with ignominy, or more than six months imprisonment (by either Court-Martial or Civil Court).

R.W., 1021, 1023–1025.

In awarding stoppages, a Court must take care not to sentence the accused to any greater deduction than will

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make good the loss or damage occasioned by his offence. In cases of fraudulent enlistment, if the accused is charged with obtaining a kit to which he was not entitled, the Court will sentence him to pay the value; in cases of deficiency of kit the Court will only sentence him to stoppages for those articles which are Government property, and which should have the values stated in the charge.

s. 138 (*b*); K.R., 561, 563—565.

If a Court recommend an accused to mercy or for the restoration of any service necessarily forfeited on conviction of desertion or fraudulent enlistment, they must give their reasons for such recommendation, and may, if they think fit, enter in the Proceedings the number of votes by which any such recommendation was lost or carried. **s. 79; R.P., 49.**

The Proceedings will then be dated and signed by the President, and by the Judge-Advocate (if any), and transmitted to the Confirming Authority as directed in the order convening the Court. **R.P., 50.**

Questions.

1. What are the duties of the President of a Court-Martial in respect of (1) examining the charge sheet, (2) the summary of evidence, (3) summoning witnesses, (4) transmitting the proceedings?
2. By whom, and under what circumstances, is a Judge-Advocate appointed to a Court-Martial? In the event of a Judge-Advocate being appointed, is he obliged to be present during the whole of the trial?
3. On the assembly of a Court-Martial, "the Court satisfy themselves, as provided by R.P., 22 and 23." Explain the meaning of this.
4. In order to sit as a member of a Court-Martial, an Officer must be *eligible* and *not disqualified.* Explain the meaning of these terms.
5. Describe the position and duties of the Prosecutor. Under what circumstances can he be called upon to give evidence as a witness?

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6. At what stage in the proceedings is the accused first formally brought before the Court? Describe the subsequent procedure of the Court up to the arraignment of the accused.

7. The accused is in doubt as to whether he shall employ Counsel to appear on his behalf, or whether it would be better that Counsel should assist him as a friend. Explain the difference between the two cases.

8. The accused objects to be tried by the President of a Court-Martial. Describe the procedure of the Court on the assumption that the objection raised is a reasonable one.

9. Describe the manner in which the President and members of a Court-Martial are sworn. Point out the various obligations undertaken by members who take the oath.

10. The Proceedings of Courts-Martial are framed for trying accused persons separately. What difference arises when several persons are tried together for an offence committed by them collectively?

11. What is meant by the arraignment of the accused? State the regulations that ensure that an accused person has sufficient time before his arraignment to prepare his defence.

12. The accused has elected to be tried by District Court-Martial instead of submitting to the summary award of his Commanding Officer. How would the fact that the accused had elected to be tried be brought to the knowledge of the members of the Court-Martial, and to what extent should the knowledge of the fact influence their dealing with the offence?

13. What is the object of using separate charge sheets? What difference arises in the procedure of a Court-Martial if the charges against the accused are placed on separate charge sheets instead of being embodied in one charge sheet?

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14. After the commencement of a trial, a defect is found in the charge sheet. Describe how defects of different kinds can be dealt with.

15. To what extent can a defective charge sheet be amended (after the examination of witnesses has commenced)? What is the object of using separate charge sheets, and how is the ordinary procedure of a Court affected by entering charges on separate charge sheets?

16. An accused, on being brought before a Court-Martial, objects to a member of the Court on the ground that he is an Officer of the Company to which the accused belongs. How would the Court deal with the case?

17. The accused before pleading directly to a charge, may offer a "special plea" to the jurisdiction of the Court, or may "object" to the charge. To what matters would the above plea and objection refer?

18. On what grounds may the accused offer a "plea in bar of trial"? At what stage in the proceedings would such a plea be brought forward?

19. Describe the procedure at a Court-Martial when the accused pleads "Guilty" to all the charges made against him.

20. The accused is being tried on alternative charges. Point out the course to be pursued by the Court if the accused (1) pleads guilty to both charges, and (2) subsequently pleads guilty to the lesser of the two charges.

21. An accused arraigned on two charges (not alternative), pleads "Guilty" to one and "Not guilty" to the other. Describe the general procedure of the Court in dealing with such pleas.

22. Explain how the evidence to be given by a witness is elicited. How is the accuracy of the evidence taken down insured?

23. A witness, after giving his evidence, retires from the Court. Describe the circumstances under which he may be recalled to give further evidence.

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24. Enumerate the several cases in which an accused charged with an offence may be found guilty of another offence of a cognate character.

25. How is the finding of a Court-Martial decided? State in general terms the subsequent procedure when (1) the accused is acquitted of all the charges, (2) acquitted of some of the charges and found guilty of others.

26. Under what circumstances would a Court-Martial be justified in passing a "special" finding?

27. How is the finding and sentence of a Court-Martial decided? When has the President a casting vote?

28. During a Court-Martial the following events take place:
    (1) The President is taken ill.
    (2) A member is taken ill.
    (3) The accused is taken ill.
    (4) The Court find that the accused was insane when he committed the offence charged.
    Describe the procedure to be adopted in each case considered separately.

29. Give a brief explanatory answer to the following questions:—
    (*a*) Can the Prosecutor give evidence as a witness either for the prosecution or the defence?
    (*b*) Can the Prosecutor comment on the fact of the accused either giving evidence himself, or not giving it?
    (*c*) Can a private soldier, called as a witness, refuse to answer a question put to him?
    (*d*) Can a Court-Martial award a sentence of imprisonment or detention to a soldier who is undergoing a previous sentence of the same character?

30. In the event of the members of a Court-Martial being equally divided in opinion on (1) their finding, (2) their sentence, what would be done? May a member who votes for the acquittal of a prisoner decline to vote on the sentence in the event of the accused being found guilty by a majority of the Court?

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31. State the regulations as to the terms in which a Court-Martial should express an award of imprisonment. Write out a sentence of imprisonment that would be applicable to a Non-Commissioned Officer found guilty of a serious offence.

32. What are the considerations that should influence a Court-Martial in deciding as to whether they should pass a sentence of imprisonment or one of detention? Write out the form of sentence in each case.

33. Under what circumstances would it be necessary to dissolve a Court-Martial after the trial has commenced? How would the dissolution of the Court affect a subsequent trial of the accused?

34. Comment on the following incidents that may arise during a trial :—
    (1) The Judge-Advocate is absent.
    (2) The Prosecutor is absent.
    (3) The Court are equally divided in opinion as to (a) the finding, (b) the sentence.

35. The accused before a Court-Martial has pleaded "Not guilty," but has been convicted. of the charges against him. Describe in full detail, as set forth in the Appendix II. Rules of Procedure, what takes place from the time the finding is recorded up to the closing of the Court to deliberate on its sentence. Specify the chief items of information furnished to the Court during this part of the procedure.

36. State the regulations to be observed by a Court-Martial in awarding imprisonment to (1) an Officer, (2) a Non-Commissioned Officer, (3) a soldier who is already under sentence of imprisonment.

37. The members of a Court-Martial differ in opinion as to (1) the nature, (2), the amount, of the punishment to be awarded. How is the matter settled?

38. A Court-Martial is closed to consider its sentence. Two members desire to award three months' imprisonment, two others four, another six, and the other four members two months' imprisonment. How is the ultimate sentence arrived at?

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39. Under what circumstances would a sentence of imprisonment be awarded in days, months, years, months and days?

40. A witness is summoned to give evidence before a Court-Martial. Describe, in full detail, how his evidence is taken and recorded.

41. Who is the Prosecutor? Who appoints him? Can he be called on to give evidence as a witness? Can he comment on the fact that the accused has given evidence, or has not given evidence?

42. Describe the procedure at a Court-Martial in each of the following cases considered separately:—The accused challenges (1) the President, (2) a Member, (3) the Prosecutor.

43. Give a brief description of the oath taken by the members of a Court-Martial, and the oath taken by a witness before giving evidence.

44. The accused may employ Counsel, or a friend, to assist him in his defence. How does the presence of these persons affect the position of the accused?

45. Describe the procedure at a Court-Martial where the members are equally divided in opinion on points that arise in connection with—

    (1) The challenge of a member.
    (2) The admissibility of certain evidence.
    (3) The finding.
    (4) The amount of imprisonment to be awarded.

46. What is meant by a casting vote? When may it be used, and when may it not be used, in deciding questions that arise during a Court-Martial?

47. Describe the procedure of a Court-Martial in the following cases (considered separately):—

    (1) The votes on the sentence are equally divided.
    (2) The Court find that the accused is insane.
    (3) A witness insults the Court.

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CHAPTER XI.

CONFIRMATION; AND EXECUTION OF SENTENCES.

All findings and sentences of Courts-Martial, except a finding of acquittal, require confirmation by the Officer having power to confirm the Proceedings of such Court, and until so confirmed are of no effect. **s. 54 (3), (6).** The authorities having power to confirm the different descriptions of Courts-Martial have already been stated in Chapter VIII.

(i.) Revision.

A Confirming Officer can send back the finding, or sentence, or both, for revision once, but only once. In this case, the Court reassembles, pursuant to the order, and, if possible, all the original members must be present. If the President is absent or the Court is reduced below the legal minimum, there can be no revision; and the Court must adjourn and report to the Confirming Officer. The proceedings are conducted in closed Court, and the Court cannot take any fresh evidence. If the sentence, only, is sent back for revision, they cannot alter the finding; if the finding is revised, and the new finding requires a sentence, the Court must pass sentence afresh, even though in the words of the former sentence, as the revocation of the finding, *ipso facto*, revokes the sentence, and unless the Court pass a fresh sentence the accused will have no sentence to undergo. The Court can, if they think right, adhere to their former finding or sentence. The sentence cannot be increased on revision, though it can, of course, be reduced; but where the first sentence was a nullity, it is not an increase to pass a valid sentence on revision.

s. 54 (2); R.P., 51, 52; App. II. p. 578.

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Illustrations.

1. A Court having found a Corporal guilty of two charges and sentenced him "to be reduced to the ranks"; the Confirming Officer sends the finding back for revision, on the ground that there is not sufficient evidence to convict on the second charge. The Court, on revision, being of this opinion, "revoke their former finding and find him guilty on the first charge, not guilty of the second charge." They must now pass a fresh sentence, which must not be more than the first one.
2. A Court having sentenced a Serjeant to be reduced to the rank of Lance-Serjeant; the sentence is sent back for revision as being a nullity (there being no such rank); the Court can now sentence the prisoner to be reduced to the ranks and imprisonment, as this is not an increase of a *former* sentence, there having been no legal sentence at all in the first instance.
3. A Court having sentenced a Corporal to be reduced to the rank of Lance-Corporal and to be fined one pound, the sentence is sent back for revision, part of it being a nullity; the Court now cannot add anything to the former sentence, which was partly legal, *i.e.*, the fine; hence, the fresh sentence cannot be more than a fine of one pound, as a sentence of reduction to the ranks would be an increase of the first one.

In the case of a finding of acquittal which requires no confirmation, the Officer, who would otherwise have confirmed, cannot make any remarks on the Proceedings, but if he thinks anything in the case requires notice, he must make a separate report to superior authority.

R P., 51 (A); K.R., 590.

(ii.) Remission, etc.

When confirming the Proceedings, either original or revised, the Confirming Officer can mitigate, remit, or commute any or all of the sentence, or may suspend the execution of the same for such time as may seem expedient.

Mitigation is the awarding a less amount of the same species of punishment; as by reducing the length of a sentence of imprisonment, and is really a partial remission.

Remission may be of the whole or part of the sentence; as where a sentence of imprisonment with hard labour is entirely remitted, or the term shortened, or the hard labour remitted.

Commutation is changing one kind of punishment for another lower in the scale laid down in s. 44; *e.g.*, penal servitude for death, or imprisonment for penal servitude, or in certain cases laid down in s. 83 (7), commuting imprisonment into transfer for general service. If a soldier has been sentenced to imprisonment and discharge with ignominy,

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and the Confirming Officer commutes the imprisonment to detention, he must remit the discharge with ignominy, as a sentence of discharge cannot accompany one of detention. If a soldier has been sentenced to imprisonment, without discharge with ignominy, for a purely military offence, he should, except under very special circumstances, commute the imprisonment to detention.

ss. 44(4), 57 (1) and *notes* ; **K.R., 583.**

The Confirming Officer may also refuse confirmation, in which case the proceedings are annulled, and the accused can be tried again ; or he may refer the Proceedings to superior authority for confirmation. When the confirming authority finds it necessary to comment upon the proceedings of a Court-Martial, whether original or revised, his remarks will be separate from and form no part of the proceedings. They will be communicated in a separate minute to the members. In no case will he comment on a finding of not guilty, or upon the inadequacy of a sentence. If the sentence is informally expressed, the confirming officer can vary the form, and if it is in excess of that allowed by law, he can reduce it to what is legal and can then confirm the sentence so altered ; but he cannot vary an altogether illegal sentence in this way.

s. 54 (5) ; **R.P., 51** (B) (2), **56** (A) ; **K.R, 589 ; A.O., $\frac{227}{08}$, $\frac{228}{08}$**

Illustrations.

1. A sentence of "one year and three months' imprisonment" can be varied to "fifteen months' imprisonment."
2. A sentence of "reduction to the rank of Lance-Serjeant" is altogether illegal, and cannot be varied.
3. A sentence of "fourteen days' confinement to barracks" is illegal, and cannot be varied.

(iii.) Approval by Civil Governors.

In certain cases the sentence must be approved by the Civil Authority, in addition to the usual confirmation by the Military Authority. In India, sentence of death for treason or murder (except on active service), or of penal servitude for a civil offence, must be approved by the Governor-General, and, in a Colony, sentence of death for any offence (except on active service), and of penal servitude for a civil offence, requires approval by the Governor of the Colony.

s. 54 (7), (8), (9).

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(iv.) PROMULGATION.

The proceedings of all Courts-Martial are to be promulgated in such manner as the Confirming Officer directs, or according to the custom of the Service. They are usually read out on parade, but in any case the charge, finding, recommendation to mercy (if any), sentence and minute of confirmation must be communicated to the accused. The date of promulgation is entered on the Proceedings. **s. 53 (9); R.P. 53; K.R. 593; Man. p. 584.**

(v.) EXECUTION OF SENTENCES.

The Confirming Officer is responsible for the execution of the sentence, and will give the necessary orders for carrying it out; or he may, if necessary, suspend the execution of it for such time as seems expedient. **s. 57.**

Soldiers sentenced in India or a Colony to penal servitude, or to imprisonment or detention exceeding twelve months, are, as soon as practicable, to be transferred to a prison or detention barrack in the United Kingdom; unless, in the case of imprisonment or detention, the Court specially orders that the punishment is to take place abroad, or unless the soldier belongs to a class in respect of which the Secretary of State has declared that it would not be beneficial to the soldier to so transfer him, by reason either of the climate or place of his birth, or of the place of his enlistment. The Channel Islands and the Isle of Man are deemed to be Colonies for the purposes of execution of sentences of imprisonment and penal servitude. **ss. 131 (2), 187 (2).**

A person sentenced by Court-Martial to penal servitude is called a "military convict." **s. 58.** Sentences of penal servitude are carried out in an ordinary convict prison, called in the Army Act a "penal servitude prison," under the orders of the Home Secretary; an officer sentenced to penal servitude must be first cashiered, and a soldier so sentenced must be discharged. **ss. 44 (2), 59—62; K.R., 390 (xii.).**

A person sentenced in India or a Colony to penal servitude may be temporarily confined in an authorized prison, *i.e.*, one which the Governor-General in India, or the Governor of the Colony, has, with the concurrence of the Secretary of State, appointed for that purpose. **s. 62.**

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Sentences of imprisonment are carried out either in a public prison, or a military prison. A soldier who has been convicted of an offence of a disgraceful nature under sections 17, 18 (4), (5), or 41, will be sent to a public prison; in other cases, he will be committed to a military prison, unless the term of imprisonment is short, and he is not to be discharged with ignominy, when he may, at the discretion of the Confirming Officer, undergo his sentence in a detention barrack.

A soldier awarded detention, either by Court-Martial or his Commanding Officer, will undergo his sentence in a detention barrack, or a branch detention barrack.

ss. 63 (1), 135; K.R., 607.

A public prison is one in which ordinary criminals are received, and is under the management of the Home Secretary. A military prison is under the management of the Secretary of State for War, and only soldiers are confined therein.

All the former central and district military prisons (except those at Woking and the Curragh), are now called detention barracks, and the former branch prisons are now branch detention barracks; and are used for the confinement of men sentenced to detention, or, in the special cases mentioned above, to imprisonment.

s. 133 (*notes*); **K.R., 645, 647; A.O.** $\frac{235}{07}$.

Sentences of penal servitude, imprisonment, or detention, commence to count from the date the original Proceedings were signed, whether the sentence is the original or a revised sentence, and even although the punishment has been substituted in commutation for a severer one. Thus, if a soldier is already under sentence of imprisonment, any fresh sentence of imprisonment will run concurrently with the unexpired term of his former sentence. **ss. 57 (5), 68.**

Illustrations.

1. Private A. is sentenced to forty-eight days' imprisonment on the 10th March, 1908. The imprisonment will begin to count from that date.
2. Corporal B. is sentenced to be reduced to the rank of Lance-Corporal on the 1st April, 1908. The Court re-assembles for revision on the 4th April, and revokes this void sentence and passes a sentence of fifty-six days' imprisonment. The imprisonment will begin to count from the 1st April.

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3. Private C. is sentenced to five years' penal servitude on the 15th May, 1908. The Confirming Officer commutes the sentence to two years' imprisonment on the 28th May. The imprisonment will begin to count from the 15th May.

4. On the 15th January, a Court sentence a soldier to death for "desertion when under orders for active service"; the Court is re-assembled for revision on the 29th January, and the Confirming Authority points out that there is not sufficient evidence to prove that the accused was "under orders for active service." The Court, therefore, revoke the former finding and sentence, and pass a sentence of two years' imprisonment. This will be reckoned from the 15th January.

5. On the 3rd May a Court are trying a soldier who is undergoing a sentence of 56 days, awarded on the 14th April; they wish to give him 84 days for the present offence. To effect this they must pass a sentence of 121 days, because he has still 37 more days to do under his former sentence, which will run concurrently with that now awarded.

(vi.) Provost Marshal.

A General Officer Commanding a body of troops abroad may appoint a Provost Marshal, who will always be a Commissioned Officer; his assistants may be Officers or Non-Commissioned Officers. His duties are, to arrest offenders and he may carry into execution any punishments inflicted by sentence of Court-Martial, but he no longer has any power to inflict punishment on his own authority. When any soldier is undergoing field imprisonment in the custody of a Provost-Marshal or his assistants, he or they have the same powers as the governor of a military prison with respect to the prisoner. (*Vide post*, p. 174-5, as to his duty at a Field General Court-Martial). **s. 74; K.R., 599.**

(vii.) Remission, Etc., after Confirmation.

After a sentence has been confirmed, the undermentioned authorities still have the power at any time to mitigate or remit any part of the punishment, or to commute it to a less one, provided always that this power must not be exercised by any Officer holding an inferior command to that of the Officer who originally confirmed the sentence.

The King, *Commander in-Chief, the Adjutant-General or the Officer Commanding the District where the soldier is, can exercise this power as regards persons under sentence anywhere.

In Ireland, the General Officer Commanding.

In India, the Commander-in-Chief in India, or such other Officers as he, with the approval of the Governor-General, may appoint.

* ***Vide* Note on p. 10.**

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In a Colony, the Officer Commanding; and elsewhere, the Officer Commanding the Forces at that place.

s. 57 (2), (3); R.P., 126 (c).

(viii.) Restitution of Stolen Property.

When any person has been convicted of stealing, embezzling, or feloniously receiving any property, the *Commander-in-Chief or the Confirming Authority may order that such property, or any part of it, found in the possession of the offender, shall be restored to the owner, and a like order may be made with respect to any property in the accused's possession which appears to have been obtained by the conversion or exchange of any of the stolen property. Moreover, if any such property has been pawned or sold to another who acted innocently, this person may, on restoring it to the owner, apply to be re-imbursed the amount given in purchase or pawn, out of the money in the offender's possession.

s. 75.

(ix.) Preservation of Proceedings.

The Proceedings of all Courts-Martial (except Regimental Courts-Martial) are, after promulgation, sent to the Judge Advocate-General in London or India, or to the Admiralty, and are there preserved for seven years from the date of confirmation in the case of a General Court-Martial, or three years in the case of any other Court. The Proceedings of a Regimental Court-Martial are kept with the unit till after the next Annual Inspection, after which they are sent to the Officer in charge of the Records of the Corps, who preserves them for three years from the date of confirmation.

R.P., 98; K.R., 1925.

During the time the Proceedings are preserved, the accused has the right to obtain a copy of them or any part of them on payment of the actual cost of the copy, not exceeding twopence for every folio of seventy-two words.

s. 124; R.P., 99.

Questions.

1. When the proceedings of a Court-Martial are forwarded for confirmation, in what different ways may the

* *Vide* **Note on p. 10.**

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Confirming Officer exercise his powers in respect to them?

2. State what happens in the following cases:—The Confirming Officer (1) confirms the finding, but not the sentence, (2) sends back the finding for revision, (3) sends back the sentence for revision, (4) refuses to confirm.

3. Point out the duty of a Confirming Officer (1) when he considers a sentence too severe, (2) when he is of opinion that it is too lenient, (3) when the sentence awarded by a Court exceeds its powers.

4. Describe the course to be pursued by a Court-Martial, when the finding of "guilty" on one of the charges tried is sent back by the Confirming Officer for revision. What happens, if one of the members of the Court is unable, by reason of illness, to attend?

5. Comment on the following matters:—(1) a finding of "not guilty," (2) the commutation of a sentence.

6. Explain the circumstances under which a Confirming Officer might amend the wording of a sentence before confirming it.

7. A Confirming Officer sends back a sentence for revision on the ground that part of it is illegal. How would the Court deal with the matter? How would the proceedings on revision be affected if the President was unable to attend?

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CHAPTER XII.

EVIDENCE.

(i.) What Must be Proved.

With certain exceptions, the charge, as stated in the charge sheet, must be proved, and, unless the evidence supports this, the accused must be acquitted, even though it may have been shown that his conduct amounted to some other offence.

The exceptions are (1) where the distinction between the two offences is one of degree, in which case an accused charged with the more serious offence may be convicted of the lesser, *e.g.*, where an accused charged with murder is found guilty of manslaughter; and (2) where the distinction between the two offences is merely technical, *e.g.*, an accused charged with stealing may be found guilty of embezzlement, and *vice versâ*. Section 56 of the Army Act provides for cases of both these kinds, and allows a person charged with certain offences to be convicted of other offences of similar nature only technically distinct, and in any case allows an accused, charged with committing an offence under circumstances involving a higher degree of punishment, to be convicted of the offence, committed under circumstances involving a less degree of punishment.

s. 56; Man., Chap. VI., para. 8.

Illustrations.

1. Private A. is charged with desertion; the evidence shows that, though absent, he intended to return; the Court can convict him of absence without leave.
2. Colour-Serjeant B. is charged with embezzlement; the evidence shows that the crime was really larceny; the Court can convict him of stealing.
3. Serjeant C. is charged with wilfully allowing a person committed to his charge to escape; there is not sufficient evidence to show that the offence was committed wilfully; the Court can convict him of negligently allowing a person committed to his charge to escape.
4. Private D. is charged with selling his kit; there is no evidence to show he sold the articles; the Court cannot convict him of losing them by neglect.

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It is sufficient if the substance of the charge is proved. Minor details, which are not essential to the constitution of the offence, may be treated as surplusage. As a rule, dates and places are immaterial, but in certain charges time and place are material, and must be proved as stated, *e.g.*, in a charge of a sentry asleep on his post ; but in any case the discrepancy between the dates stated in the charge and those proved in evidence must not be too great, or the Court cannot convict. If the substance of the charge is proved, the Court can convict, and by a special finding can correct any immaterial discrepancies.

R.P. 44 (B) ; Man., Chap. VI., para. 9 ; Powell, pp. 443, 446.

Illustrations.

1. Private A. is charged with losing by neglect his tunic, a flannel shirt, and two pairs of socks; the evidence shows that only one pair of socks is deficient; the Court can find him guilty of the charge ; "with the exception of one pair of socks."
2. Private B. is charged with striking Corporal C. with a poker ; the evidence shows the instrument used to have been a stick ; the Court can convict, curing the defect by a special finding.
3. Private D. is charged with using insubordinate language to a superior on the 3rd November; the evidence shows the offence took place on the 4th November; the Court can convict.
4. Private E. is charged with absence from the 13th to 23rd August; the evidence shows that he was absent from the 13th to 23rd October, and not August; the Court must acquit him, as the divergence between the two dates is so great it amounts to a new charge.

Certain facts are assumed to be known to the Court, and do not require to be proved in evidence. The Court is said to take "*judicial notice*" of these facts. The principal matters so judicially noticed are Public Acts of Parliament, the general proceedings of Parliament, the rules of practice of the Supreme Court of Judicature, the Accession of the King, the existence of any State and Sovereign recognised by the King, certain Seals, the extent of the British Empire, the commencement and termination of war between the King and any other Sovereign, the divisions of time, etc. Courts-Martial would also take judicial notice of the relative rank of Officers and Non-Commissioned Officers, and the general duties appertaining to various officials ; also as to whether an Officer were "in the execution of his office" or not, whether it was the duty of an escort to apprehend a soldier, etc. The Rules of Procedure are judicially noticed by all Courts, civil and military.

s. 70 (3) ; R.P., 74 ; Man., Ch. VI., paras. 9, 10 ; Stephen, Art. 58.

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(ii) Burden of Proof.

In considering upon which side the burden of proof or disproof of a criminal charge lies, the first rule is that the law presumes everyone to be innocent until legally convicted; hence the duty of disproving a charge against him does not fall upon the accused, until the Prosecutor has brought forward evidence establishing facts from which his guilt will be inferred, unless he explains away this presumption of guilt raised against him. The second rule is that he who states any fact must prove it. Hence, taking these two rules together, the burden of proof will at first lie on that party against whom the judgment of the Court would be given if no evidence at all were produced. In certain cases, the law requires an accused to prove any lawful excuse, or authority, or the absence of fraudulent intention; and this is especially so when the matter is peculiarly within the knowledge of the accused. The burden of proof as to any particular fact lies on the person wishing the Court to believe it, unless the law provides that proof of this fact shall lie on any particular person.

As the trial proceeds, the burden of proof may shift from the Prosecutor to the accused, and then back to the Prosecutor.

On proof of an unlawful act having been committed by the accused, the law presumes a guilty intention, and the onus of proving any justification or excuse lies on the accused. The law, moreover, always presumes that anyone intends the usual and natural consequences of his act.

Man., Ch. VI., paras. 12—14; Stephen, Arts. 93—96; Harris, p. 12.

Illustrations.

1. Serjeant A. is charged with releasing a person committed to his charge without due authority; the fact of this person having been released having been proved, the burden of proving that he had proper authority will rest on A.
2. Private B. is charged with absence without leave; the absence having been proved, the burden of proving that he had leave will rest on B.
3. Private C. is charged with stealing a pipe belonging to Serjeant D.; the burden of proof is on the prosecution; the evidence shows that the pipe was found in his possession soon after the theft took place; the burden of proof is shifted to C.; he proves that he bought the pipe from Private E., who represented that it was his; the burden of proof again shifts to the prosecution.
4. Private F. is charged with the murder of a comrade; the burden of proving any fact which will reduce the offence to manslaughter, or will justify the killing, rests on F.

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(iii.) Admissibility of Evidence.

The chief rule as to the admissibility of evidence is that it must be relevant; that is, that it must tend to prove or disprove the charge. No hard and fast line can be drawn between facts that are relevant and those that are not, but each case must be treated on its own merits, in accordance with the following general rules.

Evidence is not admissible to show a general disposition to commit a crime; thus, on a charge of murder, evidence could not be given to show that the accused had attempted to murder *another* person, and thus was of a murderous disposition, but, as will be shown hereafter, evidence would be admissible to prove that he had made a previous attack on the *same* person, because that would tend to show his animus against the deceased. But where several offences are connected, then evidence about one is admissible as proof of the other. For example, at the trial of a Colour-Serjeant for desertion, evidence of his having embezzled a large sum would be admissible, as affording grounds to presume that he did not intend to return. Any fact connected with the question in issue, or which forms part of the same transaction, is relevant, as are any statements made by, or to, the doer of any act at the time of performance. **Man., Ch. VI., paras. 15, 16, 20, 21; Stephen, Arts. 2, 3, 8.**

Illustrations.

1. Private A. is charged with stealing from an Officer's quarters; the fact that he was on duty in another part of the garrison at the time the theft took place is relevant.
2. Private B. is charged with desertion; the fact that he said to a comrade, as he was leaving the barracks, "Good-bye, Tom, you won't see me any more," is relevant.

Facts showing intention, knowledge, good or bad faith, and evidence as to motive, preparation, subsequent conduct, or explanatory statements, are considered relevant, and are admissible. Thus, as has already been pointed out, it is admissible on a charge of murder to prove that the accused made a previous attempt to kill the deceased, as that will show his animus against him. And so the intent in uttering counterfeit coin may be proved by evidence of previous

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or subsequent utterings, and even the bare possession of several bad pieces of money is evidence of guilty knowledge.

Man., Ch. VI., paras. 22—25; Powell, p. 471; Stephen, Arts. 7, 11.

Illustrations.

1. Private A. is charged with writing a disrespectful letter to his superior; after the writing of the letter has been proved, the Prosecutor may prove that he spoke or wrote other disrespectful words to the same superior, to show his deliberate disrespect.
2. Private B. is charged with receiving articles of kit from F. knowing them to have been stolen; the fact that he had received other articles from F., which he knew were stolen, is relevant.
3. Private C. is charged with attempting to murder his Colour-Serjeant by firing at him on the range; the fact that the Colour-Serjeant had reported him for misconduct that morning is relevant.
4. Serjeant D. is charged with stealing plate from the Officers' Mess; the fact that he packed up certain articles of plate in boxes, and had arranged for a carrier to call for them, is relevant.
5. Colour-Serjeant E. is charged with embezzlement; the fact that he had attempted to desert is relevant.

(iv.) Hearsay.

Hearsay is "the oral or written statement of a person who is not produced in Court, conveyed to the Court either by a witness or the instrumentality of a document." It will thus be seen that the term includes written statements as well as verbal ones. As a rule, hearsay evidence is inadmissible. The reasons for excluding such statements are: (1) they have no claim to credibility, because not made under the sanction of an oath or its equivalent; (2) the party affected by them has not had the opportunity of cross-examining their author; and (3) the author of the statements is not before the Court, so that they can judge, by his demeanour and manner of giving his evidence, as to his credibility. **Man., Ch. VI., para. 46; Powell, p. 132.**

This rule, however, does not exclude statements which have been made in the presence of the accused from being given in evidence; not in proof of the truth of the facts alleged in the statement, but in order to show the conduct of the accused on hearing the statement made.

Man., Ch. VI., para. 48; Stephen, Art. 8.

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Illustration.

Private A. is charged with stealing Private B.'s watch ; Serjeant C., a witness, states that Private D. told him, in the presence of A, that the watch had been found in A's bedding. This statement is admissible to show the conduct of A on hearing the statement made, but is not evidence that the watch was found as stated.

There are several exceptions to the rule that hearsay evidence is not admissible.

(A) *Dying Declarations.*—On the trial of any person for the murder or manslaughter of another, any statement made by the deceased as to the transaction which resulted in his death is admissible, provided it is proved to the satisfaction of the Court that the declarant was in immediate fear of death and had given up all hopes of recovery. It is considered that a person in such an awful situation will be as fully constrained to speak the truth as if he had been speaking under the sanction of an oath. The fact that his doctor had not given up hope of the deceased's recovery will not of itself render the declaration inadmissible, provided the deceased himself had no hope of recovery. Such declarations must, however, be very cautiously received ; for it must be remembered that possibly the declarant may have been suffering physical or mental exhaustion at the time of making the statement ; or the witness repeating it to the Court may intentionally, or from defect of memory, misrepresent what was said ; and, in any case, such statements are usually made in the absence of the accused, who has had no opportunity of cross-examining. If time allows, any such statement should be reduced to writing at the time of making, and, if possible, a Magistrate or other responsible official should be present to attest the statement ; but such a course, though expedient, is not absolutely necessary to render the declaration admissible. Provided the Court is satisfied as to the veracity, consciousness, and sense of religious responsibility, and of impending dissolution in the mind of the declarant at the time of making it, it can be received.

Man., Ch. VI., paras. 49, 50 ; Powell, pp., 171—177 ; Stephen, Art 26.

Illustrations.

1. Private A. is charged with the murder of B. B. makes a statement to the effect that A. had killed him ; at the time of making this statement he had no hope of recovery, though his doctor had, and he actually lived a week after making it. The statement is admissible.

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2. Private C. is charged with the murder of D. The latter makes a statement which is taken down in writing, and, on this statement being read over, corrects it to : " I make this statement with no hope, *at present*, of my recovery.' D. died a few hours afterwards. This statement is inadmissible.
3. Private E. is charged with the murder of F. A death-bed confession by G. that he G. had murdered F. is inadmissible.

(B) *Statements forming part of the res gestæ.*—Statements made during the transaction, which is the subject of enquiry, are admissible, even though made when the accused is no longer present, provided they follow the incident immediately, so as to form, as it were, one continuous transaction. Statements made by a person as to his bodily or mental feelings may be given in evidence when it is a question as to what his feelings were at that particular time.

Man., Ch. VI., paras. 51—54 ; Stephen, Arts. 8, 11.

Illustrations.

1. Private A. is charged with striking Serjeant B. The evidence shows that the alleged offence took place in a room when no one else was present. Private C., a witness, states that as he was coming into the room he heard A say " Take that, you devil," but he saw no blow struck. This evidence is admissible.
2. Private C. is charged with murdering D. by poison. Statements made by D. as to his feelings and symptoms during the illness preceding his death are admissible.

(C) *Statements against self-interest by a person since deceased.*—The interest must be a pecuniary or proprietary one, and the deceased must have had peculiar means for knowing the matter stated. The whole statement is relevant, and not only that part which is against the interest of the deceased. Although the statement is *admissible*, it must be remembered that its *credibility* will depend on the character for veracity of the deceased.

Man., Ch. VI., para. 55 ; Powell, p. 178 ; Stephen, Art. 28.

Illustrations.

1. Serjeant A. is charged with embezzling money belonging to the Officers' Mess, which was entrusted to him to pay some local bills. A receipted bill, signed by a tradesman since deceased, is admissible in evidence.
2. Private B. is charged with desertion ; a letter from Private C., since deceased, to B.'s mother, that he had procured a disguise for B, and helped him to get off, is inadmissible.

(D) *Statements made in the course of duty.*—Such statements are admissible, provided they were made at, or soon after, the time when the matter reported occurred, and if the facts were within the personal knowledge of the

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declarant. Only the essential subject matter of the report or statement is relevant.

Man., Ch. VI., para. 56; Powell, p. 187; Stephen, Art. 27.

Illustration.

Private A. is charged with having made a false answer on enlistment as to his age. A statement in the Register of Baptism, made by the clergyman (since deceased), that he was baptised on a certain date is admissible; a statement in the same register that he was born on a certain date is inadmissible, because it was not part of the clergyman's duty to make it.

(v.) Evidence as to Character.

Evidence of the accused's bad character cannot be given by the prosecution unless he has called evidence to show he has a good character, in which case the Prosecutor can call witnesses to rebut this evidence. On the other hand, evidence as to character is relevant for the defence, and an accused can always call witnesses to prove his good character, or he may call for the production of his Conduct Sheet. But it must be remembered that the good character he seeks to prove must be more than general, that is, the special virtues he attempts to show he possesses must be such as are antagonistic to the commission of the particular crime with which he is charged. For instance, it would be no use for a man charged with cowardice to prove that he was always a clean, smart soldier and respectful to his Officers; or, on the other hand, for a man charged with theft to show he had a known character for bravery. Care must be taken to understand that, as regards evidence as to character, what is now under consideration is evidence as to character given *before the finding* with a view to proving or disproving the charge, and this must be quite distinct from the evidence as to character given *after the finding* of guilty, which is only given to assist the Court in awarding a proper sentence.

Man., Ch. VI., paras. 17—19; Stephen, Art. 56.

(vi.) Acts and Statements of Conspirators.

In cases of conspiracy, *e.g.*, mutiny, after proof of the existence of the plot and of the accused's connection therewith, evidence of anything done, written, or said, in further-

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ance of the common object, not only by him, but by any other of the conspirators, may be given against him. But such actions or statements cannot be proved if they are not connected with the common object.

Man., Ch. VI., paras. 26, 27 ; Stephen, Art. 4.

Illustration.

Private A. is charged with conspiring to mutiny ; a letter from Private B., another mutineer, to a friend, describing their intended plans, is not admissible against A.

(vii.) Documents made Evidence by the Army Act.

As already noted the rule excluding hearsay evidence includes written as well as oral statements, hence letters and other private documents will be excluded under the rule. As regards documents of a public nature, exceptions are made, and entries in public records are admissible as evidence of the facts so recorded. The Army Act, in particular, makes the following documents evidence of the facts stated against them :—

(A) The attestation paper or re-engagement paper	is evidence of the person having given the answers therein stated.
(B) A letter or return as to the service of any person in His Majesty's Forces, signed by the Commanding Officer of any unit or ship,	is evidence of the facts in such letter or return.
(C) An Army List or Gazette, purporting to be published by authority and printed by a Government printer,	is evidence of the status of Officers and their appointments, Corps, etc.
(D) Any warrant or order made under the Army Act	is evidence of the matters therein stated.

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(E) Any record made in Regimental books in pursuance of any Act or the King's Regulations, signed by the proper Officer,	is evidence of the facts therein stated.
(F) A descriptive return, signed by a Justice,	is evidence of the matters therein stated.
(G) A certificate, signed by the Clerk of the Court or other proper official,	is evidence of the conviction and sentence, or acquittal, by a Civil Court, of any person subject to military law.
(H) The Proceedings of a Court-Martial, produced from the custody of the Judge-Advocate or other proper Officer,	are evidence of the transactions of that Court.

ss. 163—165, and 4th Schedule ; Man., Ch. VI., paras. 59—62.

(viii.) Primary and Secondary Evidence of Documents.

Primary evidence of the contents of a document is the production of the document itself in Court ; secondary evidence is a copy of the document, or the oral account of its contents, given by a witness who has read the original and can swear to its contents. It is a rule of evidence that the best evidence obtainable must always be produced, and, therefore, in the case of private documents, secondary evidence can never be given when the document is forthcoming. In the case of public documents, secondary evidence of their contents is, by various Statutes, permitted to be given, by production of properly certified copies, *e.g.*, those mentioned in s. 163 of the Army Act.

But it has been ruled that this does not include such documents as defaulter rolls, etc., so that when their contents are pertinent to the issue, the document itself must be produced and a copy attached to the Proceedings.

Man., Ch. VI., paras. 30—32, 36 ; Powell, pp. 4, 5.

The chief occasions on which secondary evidence of a private document may be given are :—

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(a) When the original appears to be in the possession of the adverse party, who refuses to produce it.

(b) When it appears to be in the possession of a stranger, who refuses to produce it.

(c) When due search has been made for the original, and it appears to be lost or destroyed.

(d) When it is of such a nature as not to be easily removable into court, *e.g.*, a writing chalked on a fence; an inscription on a tomb-stone; or when it is in a country from which it is not permitted to be removed.

(e) An entry in a banker's book, for which special provision is made by a Statute.

Man., Ch. VI., para. 35; Stephen, Art. 71.

It must be remarked, in connection with the rule as to best evidence, that the law does not require the fullest possible proof of a fact to be given. As a rule, one credible witness, or an admissible document, is sufficient in law to establish any fact; but, as a matter of practice, a Court would be slow to convict of a serious crime on the unsupported testimony of one witness. The two principal exceptions to the rule that one witness is sufficient are, (1) in charges of treason, no one can be convicted, unless two witnesses swear to the treason, or he confesses in open Court; this is provided by Statute, 7 & 8, William III., c. 3, ss. 2, 4; and (2) no one can be convicted of perjury on the evidence of one witness unless the witness is corroborated in some material point; otherwise it is simply a case of one man's oath against the other, and each would be equally credible.

Man., Ch. VI., paras 44, 45; Powell, pp. 44—46, 54.

(ix.) Circumstantial Evidence.

It is usual to distinguish between two kinds of evidence, viz.: *Direct* and *Circumstantial* (or *Indirect*). By the former we mean the evidence of a person who actually saw, or otherwise observed with his senses, the fact to which he testifies. Indirect or circumstantial evidence, is evidence of facts from which the main fact of the accused's guilt or innocence may be presumed. In comparing them, it must

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be remembered that the difference is not one of *degree* (as in the case of primary and secondary evidence), but of *kind.* Circumstantial evidence is not inferior to direct evidence, and may be superior to it; for "facts cannot lie," while witnesses may (and do). But, on the other hand, it must be remembered that the inference suggested by facts is not always the true one; and, therefore, before a Court convicts on circumstantial evidence only, they should be satisfied that the facts proved are not only consistent with the accused's guilt, but are inconsistent with his innocence.

Man., Ch. VI., paras. 41, 42; Harris, p. 421; Powell, pp. 5, 6.

(x.) Opinion.

The general rule is that a witness must only state facts and that his mere personal opinion is not evidence. The following are the principal exceptions to this rule :—

(a) On questions of identification a witness is allowed to speak as to his opinion or belief.

(b) A witness's opinion is admissible to prove the apparent condition or state of a person or thing.

(c) The opinions of skilled or scientific witnesses (called usually experts) are admissible to elucidate strictly professional or scientific matters.

Man., Ch. VI., paras. 63—67; Powell, pp. 91—94.

Illustrations.

1. A witness may give his opinion as to whether a certain document is in the handwriting of a person with whose writing he is well acquainted.
2. A witness may state that a person appeared rich or poor, or young or old.
3. A medical man may give his opinion as to the action of a poison and the usual symptoms produced by it.
4. In a case of alleged unsoundness of mind, a medical man may give his opinion as to whether the symptoms exhibited by the alleged lunatic usually show unsoundness of mind.
5. An Officer may give an opinion on any technical point connected with military science which the members of the Court would not be expected to know, *e.g.*, an Engineer Officer, on a point of fortification, or an Artillery Officer, on a detail of artillery science; but on points within ordinary military professional knowledge, the Court must take judicial notice of the matter and form their own opinion.

Experts are only considered such, when the subject with which they deal is one which requires a course of special study or experience. It is for the Court to decide whether the skill of the witness, in any matter on which evidence of

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his opinion is offered, is sufficient to entitle him to be considered as an expert. **Stephen, Art. 49.**

The evidence of experts must be received with caution, because they are apt to make themselves partisans, and their minds are biassed in favour of the cause they are called to support. **Powell, p. 96.**

Experts are often called to prove handwriting; but so long as a witness shows he is skilled in the comparison of handwritings, he need not be a professional expert. The witness may be called on to prove his skill by comparing writings before the Court. The genuineness or otherwise of handwriting in dispute may be proved in various ways:—

(*a*) By calling the party who actually wrote it.

(*b*) By a witness who actually saw the party write.

(*c*) By a witness who is acquainted with the handwriting of the supposed writer, from the fact that he had seen him write at any time, even though only once, or that he has received documents, purporting to be written by that person, in answer to others addressed by the witness to him.

(*d*) By a witness, skilled in comparing handwritings, giving his opinion, by comparing the writing with any writing proved to the satisfaction of the Court to be the genuine writing of the party.

Man., Ch. VI., para. 67; Powell, p. 330; Stephen, Arts. 51, 52.

It has been decided that a witness who swears falsely that he *thinks* or *believes*, is equally guilty of perjury with one who swears positively to what he knows is untrue.

Man., Ch. VI, para. 68.

(xi.) Admissions and Confessions.

An admission is a statement, oral or written, suggesting any inference as to any fact in issue or relevant thereto, made by, or on behalf of, any party to the proceeding. Such admissions are, as a rule, only relevant as against the party making them, and not in his favour. In criminal proceedings, admissions, as distinguished from confessions, are, strictly speaking, not admissible; this does not extend to things said or done by the accused, as part of the

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res gestæ, *e.g.*, an entry made by a person in an account book of the receipt of money is, on proof that he made the entry, receivable as an admission, on his part, of the receipt of the same.

Man., Ch. VI., para. 72, and *note*; **Stephen, Art. 15.**

A confession can only be used against the party making it; except a confession by an accomplice, made in the presence of another, is admissible so far as to show the conduct of the latter on hearing the confession made. A confession is only admissible if it is proved affirmatively to have been made entirely voluntarily. It is not deemed to be voluntary if it was caused by any inducement, threat, or promise proceeding from a person in authority, and having reference to the charge against the accused; and if it gave the accused reasonable grounds for supposing that, by making the confession, he would gain some advantage or escape some evil in connection with the charge against him.

The Prosecutor, Officers of Justice having the accused in custody, Magistrates, and other persons in similiar positions, are persons in authority. The master of an accused is not, unless the crime was against him.

A confession is not involuntary because the accused was caused, by the exhortations of a person in authority, to make it as a *religious* duty, or by any inducement collatoral to the proceedings, or held out by a person not in authority. It is deemed to be voluntary if made after the complete removal of the impression produced by any threat or promise, or other inducement, which would have rendered it involuntary. **Man.. Ch. VI., paras. 73–77; Stephen, Arts. 21, 22.**

Facts, discovered in consequence of confessions improperly obtained, may be proved, even though the confession itself is inadmissible. If a confession is used, the whole of it must be given in evidence, and not only the part adverse to the accused. **Man., Ch. VI., paras. 78, 80; Stephen, Art. 22.**

Illustrations.

1. A handbill, issued by the Secretary of State, promising a pardon to any accomplice who would confess as to a murder, induces the accused to make a confession. This is not voluntary.
2. The Chaplain exhorts an accused to confess his sins; and the latter makes a confession. This is voluntary.
3. The Serjeant of the Guard promises a soldier in arrest to let him have some tobacco if he will acknowledge his offence. The latter does so. This is a voluntary confession.

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4. **The Officer Commanding the accused's Company promises to try to get the Commanding Officer to pardon his offence if he will make a confession. The Commanding Officer refuses, and, after this has been reported to the man, he makes a confession. This is voluntary.**

5. **A soldier, accused of theft, makes a confession under circumstances which prevents it from being received as voluntary. Part of it is to the effect that the stolen property is concealed in a certain place. Evidence may be given to prove that he said this, and that the property was found at the place indicated.**

(xii.) Competency of Witnesses.

As a rule, all persons are competent witnesses; the only exceptions being in the case of one prevented, in the opinion of the Court, by extreme youth, or disease affecting his mind, from understanding the facts he is to testify to, or from realising the necessity of speaking the truth. A lunatic, *i.e.*, one who has lost his reason, may give evidence during lucid intervals. A drunken person is incompetent while under the influence of drink, but may be examined when sober. There is no legal age which fixes the competency of a child. The Court must decide in each case by the intelligence of the proposed witness, and, by examining it, to see if it understands the obligations of an oath. Former rules excluding witnesses on the ground of want of religious belief, or general bad character, or because they are parties to the case, are no longer the law; but, as already pointed out, it must be distinctly remembered that it by no means follows that all evidence that is admissible is, therefore, credible, and, in weighing the evidence, the Court must carefully consider any facts likely to diminish the credibility of the witnesses who gave it. A member of a Court-Martial is incompetent to give evidence for the prosecution, but is a competent witness for the defence; though, of course, if it is known that an accused intends to call any Officer in his defence, such Officer should not be detailed to serve on the Court.

Man., Ch. VI., paras. 82, 87—91; Powell, pp. 23—36; Stephen, Arts. 106, 107.

One radical change in the law of evidence was made by the Criminal Evidence Act, 1898. Before this Act, except in a few cases specially provided for in various Statutes, the accused, and the husband or wife of the accused, were incompetent to give evidence either for the prosecution or

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defence, and this rule extended to the case of accused jointly tried. Under the new law, an accused can, if he wishes, give evidence in his defence at any stage of the proceedings, but he cannot be compelled to give evidence, and no comment may be made by the prosecution upon the fact of his having refused to do so. A like rule now applies to the husband or wife of an accused, and, in the case of accused jointly tried, they may be witnesses for the defence, but only if the accused chooses to call them. A wife can still be called as witness for the prosecution in the special cases provided for by Statute, as above mentioned, *e.g.*, in cases of personal violence against her, or in cases of offences against women and girls under the Criminal Law Amendment Act, 1885. If the evidence of one accused is wanted against another who is being jointly tried with him, he should be released, and he is then said to turn King's evidence. But the evidence of an accomplice is considered "tainted," and should always be received with caution, and a Court should seldom, if ever, convict on the unsupported evidence of an accomplice.

The wife of the prosecutor is competent to give evidence for the prosecution or defence.

Man., Ch. VI., paras. 83—86 ; Archbold, p. 322 ; Stephen, Art. 108.

(xiii.) Privileges of Witnesses.

Although a witness may be competent to give evidence, it does not follow that he can be compelled to do so. For example, an accused is, by the recent change in the law just noted, competent to give evidence in his defence, but he cannot be compelled to do so against his will, neither can his wife be called as a witness unless he requests that she may be so called in his defence. In the case of witnesses other than the accused, there are many questions which they are not compelled to answer, and some which they will not be permitted to answer. When a witness is not compellable to answer a question or to produce some particular document, it is because some privilege intervenes, which may either be the privilege of the witness himself or of some third party.

Man., Ch. VI., para. 92 ; Powell, p. 99

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In the first place, no witness (except the accused when giving evidence in his defence) can be compelled to answer any question or produce any document tending to incriminate himself or the wife or husband of the witness, *i.e.*, to show that he had done anything which would expose him to a criminal charge. This privilege does not extend to answers tending to expose him to civil liability, *e.g.*, an action for debt. When the accused is giving evidence on his own behalf, he may be asked a question that would tend to incriminate him as to the offence charged; but he cannot be compelled to answer any question tending to show that he has committed any other offence unless (1) the proof that he has committed this other offence is admissible to show that he is guilty of the offence now charged; or (2) he has asked questions of the witnesses for the prosecution to prove his own good character or given evidence to this effect, or if the conduct of the defence has been such as to involve imputations on the character of the Prosecutor or his witnesses; or (3) he has given evidence against any other person charged with the same offence. The witness may, if he likes, waive his privilege and answer at his peril.

Man., Ch. VI., paras. 93—95; Powell, p. 100; Stephen, Art. 120.

A witness cannot be compelled to answer any question relating to State affairs without the permission of the Head of the Department concerned. Similarly, a witness cannot be compelled to answer any question, the answer to which would tend to disclose the names of persons by or to whom information was given as to the commission of offences.

Man., Ch. VI., paras. 96—99; Powell, p. 125; Stephen, Arts. 112, 113.

No question may be put to a witness as to the votes of the members of any Court-Martial previously held.

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Neither a husband nor wife is compellable to disclose any communication made to him or her by the other party during marriage, and this privilege continues for the benefit of the survivor even after the death of one of the parties.
Man., Ch. VI., para. 100; Powell, p. 41; Stephen, Art. 110.

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A legal adviser is not competent, without his client's express consent, to disclose any communication made to him as such legal adviser by, or on behalf of, his client, whether such communication was oral or documentary, and whether or not the relationship has terminated. This privilege does not extend to any communication made in furtherance of a criminal purpose, or any fact he may have observed, during the course of his employment, showing a crime or fraud has been committed since the commencement of his employment, or any fact he has become aware of otherwise than in his professional capacity. The expression, "legal adviser," includes barristers, solicitors, their clerks, and interpreters between them and their clients. It will include an Officer or other person who has acted as accused's friend at a Court-Martial. The privilege is the client's, and if he choose to waive it the witness must answer. No other relationship except this legal one gives any such privilege, and clergymen and medical advisers may be compelled to disclose communications made to them in professional confidence, but it is not the custom to press for such disclosures in the case of clergymen, and several Judges have expressed themselves strongly against such a course.

Man., Ch. VI., paras. 101, 102; Powell, pp. 106 *et seq.*, **121; Stephen, Arts. 115—117** and *note* xliv.

Illustrations.

1. A., a civilian witness against Private B., who is charged with stealing public property, is asked whether he bought any of these stores from the accused: A. can refuse to answer, as the reply might render him liable to a prosecution under section 156 of the Army Act.

2. Serjeant C., a witness, is asked by the accused, "Were you not convicted of embezzlement by a District Court-Martial in 1895?" The witness must answer this question.

3. Colonel D., a witness, is asked on behalf of the accused, Lieutenant E., a question as to the Confidential Report he had sent in about the latter. This question cannot be answered without the permission of the Secretary of State for War.

4. Private F., a witness for the prosecution, is asked, in cross-examination, if he was not, four years ago, "Private G." of another Regiment. If the answer would expose him to a trial for fraudulent enlistment, he can refuse to answer.

5. A Warrant Officer is being tried for having given false evidence at a Court-Martial for the trial of Lieutenant H., an Officer of the Regiment; Captain I, who acted as accused's friend at the former trial, is called as witness by the accused, and asked to produce a note written to him by H. relating to the conduct of his defence. The witness cannot produce the document without Lieutenant H.'s consent.

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(xiv.) Examination of Witnesses.

Every witness (including one producing documents) before giving his evidence, must be sworn in the manner prescribed by the Rules of Procedure, unless he is of a class permitted to affirm; he may then be submitted (1) to examination-in-chief by the party calling him, (2) to cross-examination by the opposite party, and (3) to re-examination by the party calling him. He is also liable to be examined by the Court and the Judge-Advocate, if there be one. **s. 52 (3); R.P., 82—84; Man., p. 583; Powell, p. 423.**

In the examination-in-chief, a witness must not, as a rule, be asked a leading question, *i.e.*, one which suggests the answer required. The exceptions to this rule are, when the questions relate only to introductory matter, and not to the substance of the issue; or when the witness is very young, or is clearly somewhat deficient in understanding, and requires help to get his evidence out of him properly; or, lastly, in the case of a hostile witness. In these last cases, leading questions may, by the leave of the Court, be put. The reason for excluding such questions is to prevent either party putting into the mouth of the witness the story he wishes him to tell. Of course, in the case of a hostile witness, the reason for the rule disappears; a hostile witness being one who has been called by either party, but who, by his manner, shows he is distinctly reluctant to give his evidence; such an one may be treated exactly as though he had been called by the opposite side, with the one exception, that the party calling him must not impeach his credit by general evidence of bad character; he has called him and produced him to the Court, and he cannot now seek to show that he is unworthy of belief. He may, however, contradict him by other evidence, or prove that he has previously made a statement at variance with his present testimony.

Man., Ch. VI., paras. 106—111; Stephen, Arts. 128—132; Powell p. 428.

When the examination-in-chief is concluded, the opposite party has the right to cross-examine. The object of the cross-examination is to impeach the accuracy, credibility, and general value of the evidence given by the witness, and

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to elicit facts favourable to the cross-examining party. Leading questions may be asked; and irrelevant questions put, in order to throw the witness off his guard. The witness may be asked any questions which shake his credit by injuring his character, but he can decline to answer if he is entitled to claim privilege as explained in the last section. Evidence cannot be given to contradict his answers to questions which may shake his credit by injuring his character, except when (1) he is asked if he has ever been convicted of felony or misdemeanour, and he denies or refuses to answer; (2) he is asked a question to show he is not impartial; (3) he has previously made an inconsistent statement, or (4) he can be shown to be a notorious liar. If the imputation conveyed by any question would only injure the character of the witness, but would not, in the opinion of the Court, shake his credit, they will not compel him to answer it; and no further examination on this matter will be allowed. The credit of a witness may be impeached by the evidence of other witnesses who swear that they believe him to be unworthy of belief on his oath; they may not be asked their reasons for this belief in their examination-in-chief, but in cross-examination they can be asked such reasons. When the credit of a witness has been thus impeached, the party calling him may call other witnesses to re-establish his credit.

R.P., 92 (B); Man., Ch. VI., paras. 112—117; Powell, pp. 429 *et seq.*; Stephen, Arts. 129—133.

After the cross-examination, the witness may be re-examined by the party calling him for the purpose of reconciling any discrepancies that may have arisen between the evidence given in the examination-in-chief and the cross-examination, or to remove any suspicion which the cross-examination may have thrown on the evidence. Such re-examination must be confined to matters arising out of the cross-examination, and cannot be used to repair omissions in the examination-in-chief. If new matter is, by the leave of the Court, introduced, then the opposite party can cross-examine further on such new matter.

Man., Ch. VI., para. 18; Powell, p. 439; Stephen, Art. 127.

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All questions will be put to the witnesses directly by the party asking them, without the intervention of the Court. The evidence will be taken down in a narrative form, as nearly as possible in the words used, unless the Prosecutor, prisoner, Judge-Advocate, or the Court consider any question and answer material, when they will be recorded *verbatim*. Similarly, any question objected to, with the grounds of objection, and the decision of the Court, will be recorded if any of the above-named consider it necessary. At the conclusion of his evidence, the evidence as taken down will be read over to the witness, to give him an opportunity of correcting any mistakes, either in the evidence he gave, or in the way it has been taken down.

R.P., 83, 95 (B) (C)

A witness may not read his evidence, but he may refresh his memory by referring to any notes, provided such notes were made by him, or with his knowledge of their correctness, soon after the occurrence to which they relate, and while the facts were fresh in his memory. Such notes must, if the opposite party wish, be handed over to him for inspection, and he can cross-examine the witness on them.

Powell, pp. 336—339; Stephen, Arts. 136, 137.

Illustrations.

1. Private A. is charged with desertion. Serjeant B., a witness for the prosecution, is asked by the Prosecutor, "Was the accused about to enter the train to Southampton, dressed in plain clothes, when you arrested him?" This is a leading question, and can be objected to.
2. Private C. is charged with stealing a watch from a shop in the town. Private D., a witness for the prosecution, is asked by the Prosecutor, "Were you looking in at Mr. E.'s shop window about 4 p.m. on the 11th November?" This is only introductory, and, therefore, though a leading question, may be put.
3. The same witness is afterwards asked, "Did you see the accused take up a watch off the counter?" This is a leading question on a material point, and cannot be put. The question should be, "Did you see the accused do anything?"
4. Private F. is charged with absence and deficiency of kit. Serjeant G. and Lance-Corporal H. may both use the list of deficiencies which they made and signed when they took an inventory of his kit on his being reported absent, to refresh their memories as to the articles deficient.

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Questions.

1. What is meant by the burden of proof?
2. What documents does the Army Act declare shall be evidence for the purpose of proving:—
   (*a*) The answer made by a recruit to questions put to him at attestation?
   (*b*) The fact that a certain man enlisted, in a certain Corps, at a particular place and date?
   (*c*) Whether a man, who says he is a deserter from a certain Corps, has ever belonged to it or not?
   (*d*) The conviction and the sentence passed by a Civil Court upon a soldier?
3. What is meant by a "dying declaration?" Under what circumstances would a dying declaration be admissible in evidence before a Court-Martial?
4. Explain what is meant by hearsay evidence, and point out the cases in which such evidence would be admissible before a Court-Martial.
5. To what extent are the following statements admissible in evidence:—
   (1) Statements made to a witness in the presence of the accused?
   (2) Statements made to a witness in the accused's absence?
   (3) Statements made to a witness by the accused?
6. Explain the circumstances under which a witness giving evidence at a Court-Martial is not obliged to answer a question put to him.
7. Explain the state of the law as to clergymen, medical men, and lawyers giving evidence before a Court-Martial as to matters confided to them in their professional capacity.
8. By the Criminal Evidence Act of 1898, an accused may give evidence himself. Give a summary of this law in so far as it affects Courts-Martial.

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9. State generally the rules as to the cross-examination and re-examination of witnesses. In what way does the position of an accused, who elects to give evidence himself, differ from that of any ordinary witness for the defence?

10. In respect of the law of evidence, explain what is meant by (1) burden of proof, (2) relevant evidence, (3) circumstantial evidence.

11. Distinguish between the primary and secondary evidence of a document. How would secondary evidence be given of the contents of a document which has been proved to have been burnt?

12. Distinguish between direct and circumstantial evidence. State the general rule as to the admissibility in evidence of a confession.

13. In considering the admissibility of evidence tendered by witnesses before a Court-Martial, to what points should the special attention of the Court be directed?

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CHAPTER XIII.

COURTS OF INQUIRY AND BOARDS.

A Court of Inquiry may be assembled by the Army Council or any Commanding Officer, whether of one or more Corps, to assist him in arriving at a correct conclusion on any subject into which he cannot conveniently inquire himself. Such Court has no judicial power, but will merely collect evidence and report. The Court will give no opinion on any point involving the conduct of any Officer or soldier, unless so directed by the Convening Officer. The Court cannot compel the attendance of civilian witnesses, and the evidence will only be taken on oath if the Convening Officer so directs. Such Court may consist of any number of members of any branch of the Service, but three will usually be enough, the senior either being appointed President by name, or acting as such by virtue of his seniority. Whenever the enquiry affects the character of any Officer or soldier he must be given an opportunity of being present throughout and of making any defence he thinks fit.

R.P., 124; K.R., 666, 667.

The law as to the Court of Inquiry, assembled to inquire into the illegal absence of a soldier, has already been explained on p. 25.

Whenever a soldier is injured, either on or off duty, the Medical Officer will forward a certificate, as to the extent of the injury, to the man's Commanding Officer, as soon as possible. If he certifies that the injury is slight and unlikely to cause permanent ill effects, no Court of Inquiry will be held. If however, the injury is serious, or doubt exists as to the cause, or whether the soldier was on duty or not, or in any other case where the Commanding Officer thinks necessary, a Court of Inquiry is to be assembled to investigate the circumstances. The Court gives no opinion; but the Commanding Officer records his opinion on the evidence. The proceedings are then confirmed by the Brigade Commander, who notes any remission of hospital stoppages he may make. It will be noted in the man's Medical History Sheet that the Court has been held, and

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whether he was on duty, or to blame, or not; and the Medical Officer will record his opinion as to the effect of the injury on the man's service. The Proceedings are attached to the man's original Attestation Paper. **K.R., 674.**

Whenever Officers or soldiers are taken prisoners of war, a Court of Inquiry is held as soon as possible after their return, to inquire into the conduct of the senior Officer or soldier of the party. Before commencing, each member makes a "declaration on honour." The evidence is taken on oath. The Court records an opinion as to whether the prisoners were captured by the chances of war, or through neglect or misconduct. The Proceedings are sent to the War Office. **R.P., 124; K.R., 675.**

A Court of Inquiry is also held whenever public stores, equipment, etc., are lost, stolen, damaged, or found to be deficient, or in case of structural damage by fire or otherwise to any building, if the loss or cost of structural repairs exceeds £50. **K.R., 670.**

Committees and Boards differ from Courts of Inquiry only in so far that the objects for which they are assembled should not involve any point of discipline; as for example the Committee of Adjustment to make up the non-effective account of a deceased soldier, or the Boards assembled to report on new buildings or conduct the examination of Officers for promotion.

R.D., Act, s. 1; K.R., 676, 868, 869, 1027.

QUESTIONS.

1. With regard to the Court of Inquiry on the illegal absence of a soldier, state the regulation as to—(1) its assembly, (2) constitution, (3) method of taking evidence, (4) record of proceedings.
2. Distinguish between a Court of Inquiry and a Board. State the regulations in connection with a Court of Inquiry as to the taking evidence on oath, and as to utilizing the proceedings of the Court at a subsequent trial by Court-Martial, which is the outcome of the Court of Inquiry.
3. Are witnesses sworn when giving evidence at a Court of Inquiry?

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CHAPTER XIV.

DISCIPLINE ON BOARD HIS MAJESTY'S SHIPS.

Troops are sometimes embarked on board one of His Majesty's ships for conveyance to foreign parts; until recently, nearly all movements of troops to and from abroad were carried out by troopships, *i.e.*, vessels belonging to the Royal Navy. By the Naval Discipline Act, 1868, it is enacted that, whenever troops are embarked on board any of His Majesty's ships, they are to be subject to the provisions of that Act, in such manner as may be directed by Order in Council. The Army Act specially lays down that nothing contained in it is to affect the application of the Naval Discipline Act or any Order in Council made thereunder.

s. 186; 29 & 30 Vict., c. 109, s. 88.

The latest Order in Council, made under the authority of the last mentioned Act, was made on the 6th February, 1882, and its chief points are as follows:—

All troops on board are under the command of the Captain of the ship and the senior Naval Officer present, and all under the equivalent rank of Captain in the Navy, or doing duty with troops, are under the Officer of the Watch. Any offence against the discipline of the ship is made an offence against s. 40 of the Army Act. The Captain of the ship can have any offender put in arrest or confinement. If the offence is such that it can only be adequately dealt with by General Court-Martial or District Court-Martial, the offender will, with the Captain's concurrence, be disembarked at the first opportunity, for trial, as these Courts cannot be held on board a King's ship. If a Non-Commissioned Officer commits an offence which the Commanding Officer of the ship and the Commanding Officer of the troops think can be dealt with by Regimental Court-

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Martial, the former may, by order in writing, authorize the latter to convene such a Court. The only punishments the Court can give are reduction, fines, and stoppages. Such sentence must, in addition to the usual confirmation, also receive the concurrence of the Captain of the ship before it can be carried into execution ; if this concurrence is withheld, the Military Commanding Officer must suspend execution of the sentence till the soldier under sentence has been disembarked. If a private soldier commits a serious offence, the Captain of the ship can deal with it, and can, by warrant under his hand and that of the Commanding Officer of the troops, sentence him to either (1) imprisonment with hard labour up to 42 days ; (2) confinement in a cell up to 14 days ; or (3) stoppages. These punishments are equivalent to Court-Martial convictions or Commanding Officer's punishments, as the case may be. In the event of the Naval and Military Commanding Officers not agreeing as to the disposal of the case, the offender will remain in arrest until the matter can be referred to superior authority. The Captain of the ship must give the Commanding Officer of the troops written authority to award certain minor punishments specified in the Summary Punishment Table annexed to the Order in Council. Three of these relate to stoppage of smoking and answering at roll calls with varying frequency, and correspond to confinement to barracks ; the others are fines for drunkenness and extra guards, corresponding to the same punishments on shore. As far as is consistent with the discipline of the ship, the troops are to be managed by their own Officers, and orders are to be conveyed through them. **Man., pp. 605—609.**

Whenever troops are embarked on board any ship, whether a King's ship or a hired transport, they carry with them the military law to which they were subject at the port of embarkation, except that the sentence of any Court held on board ship may be confirmed at the place of disembarkation, as though the offender had been tried at this latter place. **s. 188.**

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CHAPTER XV.

ENLISTMENT, Etc.

A soldier may enlist for twelve years, or for such shorter period as may be determined by regulation, and this period may be either all Army service, or partly in the Army and partly in the Reserve, in such proportions as may be fixed by the Secretary of State. Every person, on offering to enlist, must be given a Notice Paper by the recruiter, which paper contains the questions he will have to answer on attestation, the general conditions of the contract he is about to make with the Crown, and time and place where he will have to appear to be attested. A recruit can only be attested by a Justice of the Peace or by such Officers as the Secretary of State may, under the Act, authorize to attest recruits. A detailed list of such Officers is given in the Recruiting Regulations. It is the duty of the Justice to ascertain that the recruit assents to the enlistment, and is not under the influence of liquor; he will caution him as to the penalty for making false answers, and will see that he understands the questions, and that the answers are properly recorded. The man is deemed to be a soldier on signing the attestation paper and taking the oath of allegiance; and his service counts from the date of attestation.

ss. 76, 77, 79, 80, 94; R.R., 118.

If a man has received pay for three months from enlistment or re-engagement he cannot claim his discharge on account of any error or illegality in his enlistment or re-engagement, but if the claim is made within three months and is substantiated he will be discharged as soon as possible. **s. 100.**

An apprentice who has absconded and enlisted, concealing the fact, can be claimed by his master, if he is under twenty-one years of age, and if he was bound by a regular indenture for not less than four years and was under

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sixteen when so bound; and provided the master has within one month of his absence, made the oath prescribed in the First Schedule of the Army Act, before a Justice of the Peace. **s 96; First Sch.**

A soldier may, under certain conditions, *extend* his service, *i.e.*, remain on with the Colours instead of being transferred to the Reserve. The detailed regulations, relating to extension of service, are laid down in K.R., paras. 262, 263. On the other hand, the Secretary of State may allow a man to convert his Colour service into Reserve service, and thus be transferred to the Reserve sooner than he had agreed on enlistment.

s. 78 (1); K.R., 262, 263, 366—370.

A soldier may, after nine years' service, be permitted to *re-engage* to complete a total of twenty-one years' Army Service, under such regulations as may be made by the Secretary of State. The present regulations in force as to re-engagements are laid down in K.R., 264—269. Such soldier must sign a re-engagement paper. **s. 84.**

Men who have completed, or are within a year of completing, twenty-one years' service, may, with the sanction of the Officer in charge of records concerned, *continue* in the Service, subject to their right to claim their discharge at any time after giving three months' notice. A Commanding Officer may accept a shorter notice, if he thinks it in the man's interest to do so; and, on the other hand, can discharge the man at any time, but should ordinarily give him a month's notice before doing so.

s. 85; K.R., 270—272

Prolongation of Service means the detention of a soldier in Army Service for any period, not exceeding twelve months, after the date at which he would be entitled to be transferred to the Reserve or discharged. A soldier's service may be thus prolonged when:—

(i.) A state of war exists.
(ii.) He is on service beyond the seas.
(iii.) The Reserves are called out. **s, 87.**

Transfer is the term applied when a soldier is moved from the Corps in which he is serving to another Corps, or

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to the Reserve. *Posting* is the term applied to the move ment of a man from one part of his Corps to another part, as from one Battalion to another, or to the Depôt, or the Permanent Staff of a Battalion of the Territorial Force ; this can be done without the man's consent. A soldier can be transferred at any time with his own consent. He can only be transferred to another Corps without his consent under the following circumstances :—

(1) When enlisted for general service, he may, within three months of his attestation, be transferred to any other Corps of the same arm of the Service.

(2) When he has been invalided from abroad, or when his Corps is ordered abroad and he is, on account of ill-health, unfit to go with it, or is within two years of the termination of his service.

(3) When he is serving abroad and his Corps is ordered home, and he has more than two years to serve, unless he has extended his service.

(4) When he has been convicted of desertion or fraudulent enlistment, or his trial for these offences has been dispensed with ; or when he has been sentenced by Court-Martial to not less than three months' detention he is liable to general service in commutation, either wholly or partly, of any other punishment.

ss. 82 (2), *note*, **83.**

A soldier is entitled to be *discharged* on the termination of the period for which he engaged or re-engaged.

s. 90 (1).

A recruit may claim his discharge on payment of £10 at any time within three months of his attestation, unless the Reserves are called out. Other soldiers may be permitted to purchase their discharge on payment of a sum varying from £18 to £35. **s. 81 ; R.W., 1058.**

The Crown at all times has the right to discharge a man whose services are no longer required ; the various classes of discharge are dealt with in K.R., para. 390.

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QUESTIONS.

1. Explain a "Notice Paper."
2. Explain the following terms:—Extension of Service; Re-engagement.
3. Under what circumstances can soldiers, without their own consent, be transferred to a Corps other than that to which they were first appointed?
4. Explain the meaning of the following terms:—Continuance in the Service; Prolongation of Service.

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CHAPTER XVI.

MISCELLANEOUS.

(i.) Exemptions of Officers and Soldiers.

All Officers and soldiers of the Regular Forces (which term includes Marines, Indian Forces, and Auxiliary Forces when subject to military law,) on duty are exempt from payment of any tolls or duties fixed by Act of Parliament, when embarking or disembarking at any landing place, or when passing over any turnpike road or bridge. A like exemption extends to their horses and baggage, all soldiers under military escort, and all carriages belonging to the Crown or employed in military service in conveying any of the above-named persons or baggage, or on returning from conveying the same. This exemption does not extend to boats or barges. It is not a personal one, and only applies when Officers or soldiers are on duty, and a recent case has decided that an Officer living out of barracks for his own convenience is liable to pay toll when passing between the barracks and his residence. This section does not exempt troops from paying fees charged by owners for permission to pass over their private property. It can be seen, by referring to the notice board at the gate, whether a toll is authorized by Parliament. **s. 143; K.R., 1419.**

No soldier can, by any process of law, be taken out of the Service, or compelled to appear personally (otherwise than as a witness) in any case, except :—

(*a*) On a charge of, or conviction for, crime ;

(*b*) On account of a debt exceeding £30 over and above the costs of the action.

A crime means a felony or misdemeanour, and does not include breach of contract. This exemption is, of course, only personal, and does not prevent a soldier being sued for

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money owed by him. An officer or soldier cannot charge or assign his pay or pension for the payment of any debt.

s. 141, 144; Clode, Vol. II., pp. 105–107.

Officers on full pay are, by the Juries Act, 1870, exempt from serving on juries in England, and soldiers are, by the Army Act, similarly exempt anywhere. Officers are further exempt from serving in any municipal office, and indeed are expressly disqualified by the Army Act from holding certain civil and municipal offices.

ss 146, 147; Man., Ch. XII., para. 8; 33 and 34 Vict., c. 77, s. 9.

Officers and men of the Territorial Force are exempt at all times from serving on any jury. **T. & R.F. Act, s. 23.**

Officers are moreover exempt from paying licence duty for their soldier servants, or servants employed by them under Army Regulations. **Man., Ch. XII., para. 5.**

Officers and men dying on active service can, as regards their personal property, dispose of it by what is called a *nuncupative* will; *i.e.*, it need not be made in writing or executed with the usual formalities. Probate of the wills of soldiers dying in the Service are exempt from probate duty. If the surplus of the personal effects of an officer or soldier, after paying the preferential charges, is less than £100, no duty is payable thereon.

R.D. Act, s. 16; Man, Ch. XII, para. 4; Clode, Vol. I., p. 212.

(ii.) Liability to Maintain Wife and Children.

A soldier is, like any other citizen, liable to maintain his wife and children, and also any illegitimate children, of which he is proved the father, but execution for such maintenance cannot be levied on his military effects, neither can he be punished for deserting his wife and family, or for leaving them chargeable to the parish. If a decree is made against a soldier by any Court for the maintenance of his family, a copy is sent to the Secretary of State, or any Officer deputed by him to receive such notice.

These authorities, on receipt of the decree, or on being satisfied that the soldier has left his wife, or children under fourteen years of age, destitute, may order a daily stoppage

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from the man's pay, not exceeding 1s. for wife or child, or 6d. for an illegitimate child in the case of a Non-Commissioned Officer of the rank of Serjeant or upwards, and not exceeding 6d. or 3d. respectively in the case of all lower ranks. **ss. 138 (8), 145 (1), (2).**

If a man has made a false answer on attestation as to his being married, and the Parish Authorities claim him for wife desertion, and send a constable with a warrant, the Commanding Officer will discharge him and hand him over to the constable. If the Parish do not take the above steps, the Commanding Officer will apply to the Brigade Commander for authority to stop the man's pay, for the maintenance of his wife and family, as above stated. If the wife, within six months of his attestation, claims him, the Commanding Officer can either take steps to enforce the stoppage of pay, or to have him tried by a Civil Court for making a false answer, and, on conviction, discharge him. If more than six months have elapsed since his attestation before his wife claims him, the Commanding Officer will tell her he can only be discharged, if the Parish act as above described, but her claim for alimony will be referred to the Brigade Commander for authority to make the usual stoppage. **s. 99 ; K.R., 390 (vii.).**

(iii.) Liabilities of Civilians.

In addition to penalties for infringing the law relating to billeting and the impressment of carriages, which will be dealt with in Chapter XIX., civilians are liable to punishment by the ordinary Civil Courts for certain offences stated in the Army Act.

These offences and their penalties may be summarized as follows :—

(*a*) Unlawfully interfering with recruiting ; *punishment*, a fine not exceeding £20.

(*b*) Making a false answer on attestation ; *punishment*, imprisonment not exceeding three months.

(*c*) Making a false oath in respect of any pension or other payment by the military authorities ; *punishment*, as for perjury, *i.e.*, seven years penal servitude.

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(*d*) Falsely pretending to be any man in the Regular, Reserve or Auxiliary Forces; *punishment*, imprisonment not exceeding three months, or a fine not exceeding £25.

(*e*) Pretending to be a deserter; *punishment*, imprisonment not exceeding three months.

(*f*) Persuading or assisting a soldier to desert; *punishment*, imprisonment not exceeding six months.

(*g*) Trafficking in commissions; *punishment*, a fine of £100 or imprisonment not exceeding six months.

(*h*) Buying, exchanging, pawning, etc., any military equipment, soldier's kit, etc., or enticing or helping any soldier to so deal with such things; *punishment*, first offence: fine not exceeding £20, together with treble the value of the property; second offence, fine not less than £5 and not more than £20, together with treble the value of the property, *or* imprisonment not exceeding six months.

(*i*) Where any such property is found in a person's possession, unless he can satisfy the Court he came into possession lawfully; *punishment*, fine not exceeding £5.

(*j*) Detaining the identity, or life, certificate of a pensioner, or Army Reserve man, as security for debt, renders a person liable to a like penalty as for an offence under (*h*).

ss. 98, 99, 142, 152, 153, 155, 156 (1), (2), (9).

Any witness who is duly summoned to attend a Court-Martial, and who, after payment or tender of his expenses, fails to attend, or to be sworn, or to give evidence, and any person guilty of contempt of Court towards a Court-Martial, may be dealt with by an ordinary Civil Court for contempt as though the offence had taken place before the latter Court. Any witness giving false evidence before a Court-Martial, commits perjury, and is liable to be dealt with by a Criminal Court for this offence. **s. 126.**

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(iv.) DEFINITIONS.

"*On Active Service*" means whenever a person forms part of a force

(1) engaged in operations against the enemy;
(2) engaged in military operations in a country wholly or partly occupied by the enemy; or
(3) in military occupation of any foreign country.

Whenever, by reason of the imminence, or recent cessation, of hostilities, the Governor of a Colony, or General Officer Commanding the Forces out of the King's dominions, considers it expedient, he may declare that the troops are to be deemed on active service for any period not exceeding three months; this period can be renewed from time to time if still necessary. If the Governor or General is in telegraphic communication with the Secretary of State, he must first obtain his consent; in other cases he must report his action, as soon as possible, to this Minister, who can, if he thinks fit, annul the declaration, without prejudice to anything that has taken place under it. **s. 189.**

An "*Officer*" is any person in pay, or commissioned, as such in any part of His Majesty's Forces, and includes any person, whether retired or not, who, by virtue of his commission, is entitled to the style of Officer of His Majesty's Forces. Warrant and other Officers holding *honorary* commissions are Officers within the meaning of the Act. **s. 190 (4).**

A "*Non-Commissioned Officer*" includes acting Non-Commissioned Officers and Army Schoolmasters, but, except as mentioned in the Act, does not include Warrant Officers. **s. 190 (5).**

A "*Soldier*" does not include an Officer; but includes every one else subject to military law, with certain modifications* in the case of Warrant and Non-Commissioned Officers. **ss. 182, 183, 190 (6).**

A "*Superior Officer*," used in relation to a soldier, includes Warrant and Non-Commissioned Officers. As already explained, it may include even a private. *Vide* p. 21. **s. 190 (7).**

* For these modifications *vide* p. 10.

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"*Regular Forces*" mean those who are liable to serve continuously for a term in any part of the world. **s. 190 (8).**

"*Reserve Forces*" mean the Army Reserve and the Militia Reserve. **s. 190 (9).**

"*Auxiliary Forces*" mean, the Territorial Force, Militia, Yeomanry, and Volunteers. **s. 190 (12).**

A "*Corps*" means any military body, whether known as Territorial Regiment, or by any other name, as may from time to time, be declared by Royal Warrant to be a Corps, and may consist entirely of Regulars, or either kind of Auxiliaries, or mixed. The Royal Warrant now in force was issued 31st March, 1908. **s. 190 (15); A.O. $\frac{69}{08}$.**

A "*Military Decoration*" means any medal, clasp, good conduct badge, or decoration. **s. 190 (18).**

A "*Military Reward*" means any reward for long service or good conduct, and includes good conduct pay, pension, and any other pecuniary reward. **s. 190 (19).**

"*Enemy*" includes all armed mutineers, armed rebels, armed rioters, and pirates. **s. 190 (20).**

A "*Colony*" means any part of His Majesty's dominions, exclusive of the British Islands and India. **s. 190 (23).**

A "*Foreign Country*" is any place not situate in the United Kingdom, India, or a Colony, and not on the high seas. **s. 190 (24).**

"*Beyond the Seas*" means out of the United Kingdom, the Channel Islands, and the Isle of Man. **s. 190 (25).**

A "*Court of Summary Jurisdiction*" means a Police or Stipendiary Magistrate, or two Justices; or, in Scotland, the Sheriff or Sheriff Substitute.

A "*Summary Conviction*" means a conviction by any such Court. **s. 190 (35); and *note*.**

"*Horse*" includes mule and every kind of beast of burden or draught. **s. 190 (40).**

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In the Act, masculine words include feminine ; the plural includes the singular, and the singular the plural ; month means a calendar month ; a year means twelve calendar months, and may commence on any day.

Interpretation Act, 1889, ss. 1, 3.

(v.)—Company Conduct Sheets. (A.F. B 121).

A guard book containing sheets for every Non-Commissioned Officer under the rank of Colour-Serjeant and man in the company, is to be kept by the Captain in his own possession. In it is to be recorded by the captain every offence committed by any man for which punishment has been awarded or reprimand administered, except offences, other than drunkenness, for which confinement to barracks for one day, or its equivalent punishment on board ship, has been awarded. Admonition will only be entered in cases of drunkenness or those involving forfeiture of pay. Every case of drunkenness will be entered in black ink and numbered consecutively in red ink in the column set apart for that purpose. Every case of admission to hospital through alcoholism is to be entered in red ink. A record of the class of service pay to which the man is entitled is also entered. The officer who makes an entry is to initial it in the last column.

K.R., 1921.

The following rules are to be observed in making entries :

(i.) In trials by Court-Martial the "statement of offence" is to be entered, and when there is more than one charge, they are to be numbered. When the statement of offence does not disclose the full nature of the offence the "particulars" of the charge will be given.

e.g. "Neglecting to obey garrison orders—being out of bounds" ;
"Conduct to the prejudice of good order and military discipline—gambling with privates."

(ii.) Vague entries, such as "improper conduct," are to be avoided.

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(iii). No date or place is to be entered in the "offence" column, unless there are two, as the "date" or "place" columns show these when there is only one.

(iv.) Confinement to barracks is entered as *C.B.*
Imprisonment with hard labour as *Impt. H.L.*
Detention as *Detn.*
Fine as *fined.*—
Penal Servitude as *P.S.*
Deprived of lance stripe as *Depd. Lce. Stripe.*

(v.) *Detention*, when awarded by the Commanding Officer, is entered in hours up to seven days, inclusive; when over seven days, it is entered in days.

(vi.) The date of a summary award, or the original sentence of Court-Martial, is to be entered in the column "date of award."

(vii.) Forfeiture of pay, service pay, or a good conduct badge is to be noted in the column of "Remarks" as "*Forfeits.....days' pay*," or "*Forfeits G.C.B.*"

K.R., 1916, 1917.

All entries in the Conduct Sheets will be compared frequently by the Commanding Officer with the awards in the guard reports and minor offence reports. **K.R., 1921.**

In each guard book a specimen sheet is to be kept for guidance in making entries, together with an alphabetical roll of all the sheets in the portfolio. When a sheet is temporarily taken out the date and reason for such removal is to be noted in pencil against the man's name. **K.R., 1921.**

If a sheet is lost a Court of Inquiry is to be at once assembled by the Commanding Officer to investigate the circumstances, and to take evidence as to the number and nature of the entries of the lost sheet. A new sheet will then be made out in accordance with the evidence then obtained, and the Commanding Officer will authorize its being substituted for the one lost. A note in red ink "Substituted for original, lost," with date and C.O.'s signature, will be made in front of "number of sheet."

K.R., 1918.

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When a man is discharged, his Company Conduct Sheet will be destroyed, a record will, however, be kept of deprivation of lance stripe, severe reprimand of Non-Commissioned Officers, admission to hospital through alcoholism, and all cases of drunkenness incurred before 1st February, 1907. If a man's sheet contains any entries, it will also be destroyed and a blank one substituted :—

(*a*) On completion of six months' service from attestation.
(*b*) After every continuous period of two years without an entry.
(*c*) On promotion to serjeant.
(*d*) On transfer to the reserve.

When a new sheet is taken into use the Captain will make and sign an entry at the top. "Sheet destroyed (date); last entry (date)." Before destroying the old sheet the heading in the new one will be compared, and the entries in the Regimental Sheet checked. **K.R., 1922.**

When a unit goes on active service the Company Sheets will be left at the base depot: they will be kept up from periodical returns, compiled from entries in the Captain's Pocket Book, furnished by the unit in the field. After completing the Company Sheets, these returns will be sent to the Officer i/c Records to complete the Regimental Sheets. **K.R., 1923.**

(vi.)—Captain's Pocket Book.

On active service in the field all entries of offences will be made in the Captain's Pocket Book, from which copies will be sent periodically, as occasion offers, to the base depôt of the unit.

The book will contain a nominal list of the men of the company, &c., with an assessment by the Company Commander of their respective characters at the commencement of the campaign, number of cases of drunkenness, with date of last instance, &c.

If a man be transferred, while in the field, to another unit, it will be sufficient if he be accompanied by a memorandum showing an assessment of his character up to date

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of transfer and the total number of cases of drunkenness recorded against him, with the date of last entry. If the character is not satisfactory a short explanatory note may be added, *e.g.*:—

No.——, Pte.————. Previous cases of drunkenness, eight. Last offence, 17.3.06. Last case of drunkenness, 22.2.06. Character, bad. Insubordinate.

K.R., 1924.

(vii) —REGIMENTAL CONDUCT SHEETS.

A sheet is to be kept for every Non-Commissioned Officer and man with his duplicate attestation, except those of Non-Commissioned Officers of the rank of colour-serjeant and upwards, which will be kept as "confidential." The following entries will be made therein:—

(i.) Every conviction by Court-Martial; every award by the Commanding Officer of one of H.M. Ships; every case of desertion or fraudulent enlistment when trial has been dispensed with; every conviction by a court of ordinary criminal jurisdiction, or by a Court of Summary Jurisdiction. But when no punishment has been awarded on conviction by either of these Civil Courts, and also when the sentence of a Court of Summary Jurisdiction is a fine, and the offender has not been imprisoned in default of payment, the Commanding Officer may, if he thinks fit, apply to an Officer not below the rank of Brigadier-General for authority not to make a regimental entry.

(ii.) Every case of reduction of a Non-Commissioned Officer, or deprivation of lance stripe for an offence; not for inefficiency.

(iii.) Every award of detention by the Commanding Officer.

(iv.) Every offence entailing forfeiture of pay except (*a*) where the offence is absence not exceeding two days, (*b*) when the forfeiture is in consequence of a civil conviction, and no entry has been made

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under (i), or (c) when the offence was committed before enlistment. Stoppage of smoking on board ship exceeding seven days.

(v.) Confinement to barracks exceeding seven days.

(vi) Every award on board H.M. Ships declared by the Regulations for Troopships to be equivalent to a regimental entry.

(vii.) Any punishment awarded by visitors in a military or naval prison or detention barracks; by Officers Commanding garrisons, brigades, or units, in a branch detention barrack, when so directed by the Officer awarding the punishment; and by directors of convict prisons in a civil gaol.

(viii.) Every conviction under Reserve Forces Act, 1882, s. 6, of an Army Reserve man.

(ix.) Every case of drunkenness.

(x.) Every severe reprimand of a Non-Commissioned Officer.

(xi) Every admission to hospital through alcoholism.

(xii.) Any special act of gallantry. **K.R, 1916.**

The rules as to the manner in which entries are to be made; and for the disposal of the sheet in the case of the death, desertion, or discharge of the soldier; and the action to be taken in the event of a sheet being lost are the same as those given in the last section for the Company Sheets.

K.R., 1917, 1918.

When a unit proceeds on active service all regimental conduct sheets will be forwarded to the Officer i/c records concerned, by whom they will be kept up from periodical returns forwarded from the unit in the field through the base record office. **K.R., 1919.**

Certified copies of all convictions by the Civil Power will be attached to the Regimental Conduct Sheet. When the imprisonment exceeds seven days, the record will be produced in evidence in the same manner as a Court-Martial conviction; when the imprisonment is under seven days, the conviction counts as an ordinary regimental entry.

K.R, 1916.

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CHAPTER XVII.

CUSTOMS OF WAR.

The Customs of War are those principles and rules which have gradually grown up from the dark ages to the present time for regulating the conduct of war between two belligerent States. As civilization has advanced, the method of carrying on war has become more humane, and by the general consent of civilized nations certain recognized rules have been adopted. These customs differ from an ordinary law in that there is no tribunal which can enforce them or punish an infraction of them; but most of them have become, either by long usage, or in many cases by express convention, so well established, that no Power would dare incur the just odium of the rest of the civilized world by doing anything contrary to them. Several Conventions and Conferences have from time to time been attended by most of the Great Powers with a view to drawing up definite rules on different subjects connected with carrying on warfare. Such among others have been:—

1. *The Geneva Convention*, for the amelioration of the condition of the wounded, held in August, 1864.
   Man., p. 223, *et seq.*
2. *The Declaration of St. Petersburg*, as to explosive bullets, signed 11th December, 1868.
   Man., p. 226, *et seq.*
3. *The Brussels Conference*, on the Customs of War, held in 1874; but which was never ratified.
   Holls, p. 134.
4. *The Peace Conference at the Hague*, held, on the initiation of the Emperor of Russia, from 18th May to 29th July, 1899. **Holls**, pp. 36, 335.

A Committee of this Conference considered the existing Customs of War, and drew up a Convention which was ratified

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by all the Great Powers represented at the Conference, except China and Sweden; and three Declarations agreed to by all the Signatory Powers except Great Britain and the United States. The rules therein laid down are expressly declared to be binding on the Signatory Powers, in case of war between two or more of them (unless either side has a Non-Signatory Power as an ally) until a year after any Power may declare its intention to renounce the Convention. It was further agreed that each Power should issue to its Army, "Regulations for the Conduct of War." This has been done in the case of our Army by the issue from the War Office of a small book "The Law and Customs of War on Land," 1904.

L.W., App. II., p 56 *et seq.*; **Holls, pp. 139, 140.**

The principal points touched on in this Convention will now be considered separately.

(i.) BELLIGERENTS.

By a recognized principle of International Law every subject of one of the belligerent States is, from the moment war is declared, the enemy of every subject of the other, and all intercourse between them is at an end till the war is over. In practice, however, this strict principle is much modified, and in modern times the subjects of one State have been permitted to remain in the territory of the other, and even carry on their ordinary occupation, provided they do nothing to interfere with the conduct of the war.

L.W. para. 19; Hall, sec. 126.

In olden days war was commenced by a solemn and formal declaration of war made to the other Power; but the tendency of modern practice is for the first acts of war to be contemporaneous with this declaration, and in many cases it has been omitted altogether. In this country the commencement of war is announced by a Royal Proclamation, posted in the City of London.

Hall, sec., 123.

Although, as just stated, all subjects of an enemy State are, strictly speaking, enemies, in practice they are divided into two classes, viz.:—(1) the enemy's armed forces, and (2) the unarmed population. With the latter, so long as

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they do nothing of a hostile character, the troops of the other belligerent will not interfere. The armed forces of course include the regular army, militia, and volunteers of the State, which are usually regularly organized and wear a recognized uniform. It has, however, always been a disputed point, how far hastily raised levies and volunteers assisting the regular troops of their country are entitled to be recognized as regular combatants. It has now been decided that these will be entitled to be so recognized, provided the following conditions are fulfilled :—

(1) They must be commanded by a person responsible for his subordinates.
(2) They must have a distinctive emblem recognizable at a distance.
(3) They must bear arms openly.
(4) They must conduct their operations in accordance with the Customs of War.

A further concession is made to a *levée en masse* of the population of an invaded territory, who take up arms to resist the invader, and who, though they have not time to organize as above, yet act in strict accordance with the Customs of War.

L.W. paras. 25, 26 ; Hall, secs. 176—179 ; Holls, p. 141.

(ii.) Means of Carrying on War.

The right of belligerents to adopt means of injuring the enemy, is not unlimited ; and the following are expressly prohibited :—

(*a*) To employ poison or poisoned arms ;
(*b*) To treacherously kill or wound individuals belonging to the hostile nation or army ;
(*c*) To kill or wound an enemy who has laid down his arms, or has surrendered ;
(*d*) To declare that no quarter will be given ;
(*e*) To employ arms, projectiles, or materials of a nature to cause superfluous injury ;
(*f*) To make improper use of a flag of truce, the national flag, or military ensign, or the enemy's

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uniform, or the distinctive badges of the Geneva Convention (*vide* p. 166).

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure is imperatively demanded by the necessities of war.

L.W. paras. 55, 58, 64; Holls., pp. 151, 152; Hall, secs. 129, 184, 185, 187.

With reference to (*e*) it was decided by the Declaration of St. Petersburg in 1868, that the employment of an *explosive* bullet of less than 400 grammes (a little more than 14 oz.) should be unlawful; and at the Peace Conference at the Hague it was further agreed by all the Powers, except Great Britain and the United States, to abstain from *expansive* bullets, or the use of projectiles diffusing an asphyxiating or deleterious gas, or for five years from the date of the Convention (29th July, 1899), launching projectiles or explosives from balloons, or similar practices.

L.W., para. 57, App. III. Holls., pp. 455, 459, 461.

Ruses of war and the employment of methods necessary to obtain information, are permissible. The attack or bombardment of undefended towns, villages or houses is prohibited. Before commencing a bombardment, except in the case of an assault, the Commander should give warning to the authorities, and will as far as possible spare buildings devoted to religion, art, or charity, and hospitals and places where sick and wounded are collected, provided these are not used for military purposes. These should be indicated by some distinctive mark. The pillage of a town taken by storm is absolutely prohibited. It is an extreme measure, but the Commander of a besieging force is quite justified in driving back the inhabitants of a besieged town, whom the garrison may have turned out with a view to economising provisions. **L.W., paras. 59—63; Holls, pp, 152, 153.**

(iii.) Spies and Stratagems.

A spy is one who is found in the zone of operations of a belligerent, with the object of obtaining information clandestinely and in disguise, which he intends to communicate

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to the enemy. Soldiers in uniform, no matter how cautiously they may penetrate the enemy's lines, are never liable to be considered spies; neither are civilians who are carrying out their mission openly. During the Franco-German War of 1870-71, the Germans wished to treat persons passing over their lines in balloons, as spies; but it has now been definitely decided that such are not spies. It is lawful for a Commander to employ spies, but no one can be obliged to undertake the duty except voluntarily. A spy who is captured in the act is liable to be punished with death, but he must not be punished without a previous trial. A spy who has completed his mission and rejoined the forces to which he belongs, cannot, if subsequently captured, be punished for his previous conduct, but must be treated like any other prisoner of war.

L.W., paras. 65-67; Holls, pp. 153, 154; Hall, sec. 188.

As already stated, ruses of war are allowable, and any stratagem or means of deceiving the enemy which are not perfidious are permitted, such as false attacks, or the spread of false information, so as to mislead him as to the real intentions of the Commander. But no breach of an express or implied agreement that the truth should be spoken or acted on, can ever be justified; and as noted above, any improper use of recognized emblems is prohibited, and would be a gross breach of faith.

Hall, s. 187.

(iv.) Prisoners of War.

Prisoners captured by a belligerent must be treated humanely and only subjected to such confinement as is necessary to prevent their escape. A prisoner attempting to escape may be killed in the act of escaping if necessary, but if retaken, is only subject to disciplinary punishment, not however extending to death, *e.g.*, he may in future be kept in closer confinement to prevent a second escape. Prisoners who succeed in escaping are not, if again taken prisoners, liable to any punishment for their former flight. A general rising among prisoners or other acts of insubordination may warrant the adoption of such severity as may be

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necessary to repress them. Prisoners of war are subject to the regulations in force in the Army of the State which has captured them.

L.W., paras. 29, 32; Holls, pp., 145, 146 ; Hall, sec. 132.

Prisoners of war are in the hands of the hostile Government, not those of the individuals who may have captured them. Their arms and other military equipment, may be taken from them, but their private property must be left to them. The captor is bound to feed and support them ; and as a rule the scale of maintenance should be equal to that of equivalent ranks in the Army of the State in whose hands they are ; they are sometimes given pay in addition. A prisoner, if asked, is bound to disclose his true rank, otherwise he is liable to suffer a loss of the advantages granted to prisoners of his class. In return for this maintenance a State may utilize the labour of prisoners either in the public service or for private individuals, and the wages they earn go towards improving their condition, the balance being paid them on release. Prisoners cannot, however, be employed on any military work ; nor can they be punished or ill-treated for not giving information as to the force to which they belong.

L.W., paras. 28, 30, 31, 33; Holls, pp. 145—147; Hall, sec. 132.

Non-combatants, such as newspaper correspondents, sutlers or contractors are liable to be treated as prisoners of war, if the capturing State thinks fit to detain them. A person who has violated the Customs of War by such acts as killing or robbing the wounded, has none of the rights of a prisoner of war, but may be punished with death.

L.W., paras. 37, 97; Holls, p. 148 ; Hall, sec. 131.

Prisoners may be released on parole; but there is no obligation on a State to grant a parole, and no obligation on a prisoner to accept one. Indeed, unless the law of his country permits him, he is not at liberty to do so. A superior Officer may give a parole for himself and subordinates, but an inferior Officer may not do so without authority from his superior Officer if the latter is within

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reach. By English custom a private soldier can only give his parole through a Commissioned Officer. A prisoner, who is released on parole, is allowed to return to his own country on the understanding that he will not serve again against the same enemy during the same war. This does not prevent his services being employed in duties at home, such as drilling recruits, and he can serve actively in a separate campaign against a distinct enemy. A prisoner cannot promise never to serve again against the capturing State, as he cannot thus divest himself of his allegiance to his own Sovereign. A person, who breaks his parole and is retaken, is liable to death.

L.W., paras. 33-46; Holls, pp. 147, 148; Hall, sec. 133.

Prisoners of war are usually exchanged by an agreement between the respective States called a *Cartel*; but a belligerent has the right to refuse to exchange, and may keep his prisoners till the end of the war. Exchange is effected by releasing equal numbers of troops of corresponding ranks and quality, a larger number of inferior ranks or quality being given as an equivalent for fewer of a superior class. It is usual to release surgeons and chaplains, who may have been taken ministering to the wounded, without demanding any equivalent for them. Prisoners who have been thus exchanged are of course free to take further part in the campaign. A ship employed in the conveyance of exchanged prisoners of war is called a Cartel Ship.

Hall, sec. 134.

(v.) Sick and Wounded.

Under the Geneva Convention already referred to, the sick and wounded of the enemy are to be treated with the same care as those of the captor. Military hospitals and ambulances, with their transport, together with the surgeons, nurses, and other attendants are considered neutral. Such neutrality of course ceases if any of them are employed for purely military purposes. A distinctive flag and arm badge (a red cross on a white ground) have been agreed to, for use by all the Signatory Powers in their ambulance service in the field. Wounded soldiers, who are

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incapable of further service, are to be sent to their own country as soon as their wounds allow.

Man., pp. 223-4 ; L.W., paras. 45-53 ; Holls, p. 151 ; Hall, sec. 130.

(vi.) Intercourse between Belligerents.

Belligerents are from time to time necessarily brought into non-hostile relations with each other, the formalities connected with which have been arranged for. Such are capitulations, armistices, flags of truce, passports, safe conducts, etc.

A capitulation is an agreement under which a besieged place, or a body of troops in the field, is surrendered to the enemy on stated conditions. Such agreeement must be in accordance with military honour, and when once settled must be scrupulously adhered to by both parties. Commanders of forces in the field are invested with powers to agree to capitulations ; but the exercise of these powers is limited by the necessities of the case.

L.W., para. 86 ; Holls, p. 155 ; Hall, secs. 189, 194.

A suspension of arms, or an armistice, is an agreement made for a temporary suspension of hostilities either for a short time for some passing object, or for a longer time and over a wider area for some more general object. A Commander is deemed to have power to conclude an armistice delegated to him by his Sovereign, and this presumption is so strong that the Sovereign cannot repudiate the act of his Officer, though he can punish him for his conduct. A general armistice suspends all military operations between the belligerents ; a local one only those between the troops within a named radius. The conclusion of an armistice must be notified by Commanders to their troops in good time, and hostilities are at once suspended, or after an agreed time. In a large theatre of war, it would be advisable to fix an hour at which the armistice was to commence, in order to give time for its notification to reach scattered bodies of troops. Too much care cannot be taken in

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precisely defining the commencement and termination of the truce, and also to state exactly what may or may not be done by the belligerents during its continuance. The generally accepted rule is, that neither side may profit militarily by a suspension of arms, and thus may not execute any military manœuvre, such as moving troops, repairing fortifications, or revictualling a besieged place, which would have been impossible for them had not the suspension of hostilities taken place. But such movements in rear of the respective armies, or interior works in a fortress, as could in any case be carried out without interruption by the enemy are not prohibited, and it would be only fair for the besieged to bring in an amount of food equal to that consumed during the armistice, as otherwise the garrison would be put to a disadvantage by the mere fact of the armistice existing.

L.W., paras. 87-90; Holls, pp. 155, 156; Hall, sec. 192.

A flag of truce is used when a belligerent wishes to enter into negociations with his enemy. The individual (usually an Officer) charged with this mission proceeds, accompanied by a trumpeter, or drummer, and a person bearing a white flag. All of these are inviolate and may not be captured; nor, although the enemy is not bound to receive the flag of truce, may they be turned back by being fired on without first being signalled to withdraw. If a white flag is hoisted during an engagement, the troops to which it belongs must cease fire, and if the enemy will receive it he must do the same; but he is not bound to cease firing at once, and the other party have no ground for complaint if the bearers of the flag of truce are killed. A belligerent has the right to take any steps necessary to prevent the abuse of a flag of truce, such as blindfolding the party before admitting them within the outposts, etc. In case of abuse he has the right to detain the bearers, or if it is being used to obtain information surreptitiously they are liable to be treated as spies.

L.W., paras. 83-85; Holls, p. 154, 155; Hall, sec. 190.

Passports are written permissions, given by a belligerent to subjects of the enemy, whom he allows to travel without special restrictions in the territory under his control. Safe conducts are similar permissions under which persons t

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whom they are granted may proceed to a particular place for a specified object. The latter term is also applied to permission to remove goods. Either a passport or a safe conduct may be revoked by the authority who granted it, or his superior, whenever, in his opinion, its continuation would be injurious; but good faith requires that due notice of such resolution should be given to the grantee.

L.W., para. 96; Hall, sec. 191.

(vii.) MILITARY OCCUPATION OF HOSTILE TERRITORY.

Territory is considered occupied when actually under the authority of the hostile forces, but the occupation is limited to places where the authority is actually established and able to assert itself. When such is the fact the authority of the local Government is supplanted by that of the Commander of the invading troops, who rules the country by what is called Martial Law. As a rule, if the local tribunals and officials are able to carry out their duties, they will do so under the orders of the Commander of the forces; but these may be supplemented or displaced by Military Courts and officials appointed by the invader, into whose hands all authority has passed, and who is responsible for the maintenance, as far as possible, of public order and safety. While individuals may be punished in any way he decrees for breaches of regulations issued to ensure public order and the safety of the troops, no general penalty can be inflicted on the population for the acts of such individuals, for which the community cannot be regarded as collectively responsible. The inhabitants cannot be compelled to take an oath of allegiance to the hostile Power, or to engage in any military operations against their own country. Family honour and rights, private property, and religious liberty must be respected. Pillage is absolutely forbidden, and all property belonging to municipalities, or religious, charitable or educational institutions, even when State property, is to be treated as private property; while all seizure or damage to such institutions, or historical monuments, works of art or science, or State archives is prohibited. An army of occupation may, however, take possession of any cash or other funds belonging to the State, as well as all depôts of

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arms and other military stores, and may collect the usual taxes, etc., imposed by the State, out of which the expenses of the administration of the occupied territory will be defrayed. *Requisitions, i.e.*, provision of goods in kind, and *contributions, i.e.*, payment of specified sums of money, may only be levied on the authority of the Commander on the spot, if the necessities of the occupying army demand it, and must be proportionate to the resources of the country. A similar rule exists as to the enforced services of the inhabitants, which must never be of a nature to involve the population in taking part in military operations against their own country, as already noted.

L.W., paras. 68-81; Holls, pp. 156-160; Hall, secs. 153-161.

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PART II.

CAPTAINS, BEFORE PROMOTION TO MAJOR.

[In Addition to Part I.]

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CHAPTER XVIII.

FIELD GENERAL COURTS-MARTIAL.

This Court can only be convened on active service or beyond the seas when it is not practicable to convene a General Court-Martial; but if the troops are not on active service, it can only try an offence committed against the person or property of an inhabitant of the country.

s. 49 (1).

Convening Authority.—Any Commanding Officer of a Corps or body of troops; but, unless on active service, the Commanding Officer should not convene unless authorized by the General Officer Commanding the Forces to which he belongs. **s. 49 (1); R.P., 105 (B).**

Legal Minimum.—Three Officers, if possible; if not, then two. **s. 49 (1*b*).**

Service required.—Each Officer should have held a commission for at least one year, and if Officers of three years' service are available they will be detailed in preference.

R.P. 106 (C).

Corps of Members.—May belong to the same or different Corps. **s. 50 (1).**

Rank of President.—Not below Field Officer, unless the Convening Officer is below that rank or is of opinion that a Field Officer is not available, when he must be a Captain, unless a Captain is not available, when he may be a Subaltern. **s. 49 (1*c*)., R.P. 106 (B).**

Jurisdiction.—All persons subject to military law, under the circumstances stated above. **s. 49 (1).**

Powers of Punishment.—If the Court consists of not less than three members, it has the powers of a General Court-Martial; if of only two members, then not exceeding imprisonment or field punishment. **s. 49 (1*d*).**

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Confirming Authority.—Any Officer authorized to confirm a General Court-Martial; or, on active service, any Officer authorized by the Rules of Procedure to confirm a Field General Court-Martial, provided that sentence of death or penal servitude is not to be carried out until the decision of the Commander-in-Chief in the field is known, or unless owing to the nature of the country, great distance, or operations of the enemy delay is impracticable, when the sentence may be carried out if confirmed by the General or Field Officer Commanding the Force with which the accused is present. **s. 54 (1*d*); R.P., 120 (D), (E).**

Except in the case of a Field General Court-Martial, a Member of a Court-Martial cannot confirm the Proceedings of that Court, and if he becomes the Confirming Officer, he must refer the Proceedings to some superior authority having power to confirm such Courts; or in a Colony, if there is no such superior authority, he can refer to the Governor, who, in such a case, has power to confirm the Proceedings. **s. 54 (4).**

A Member of a Field General Court-Martial can only confirm if he has power to do so, and if he considers that it it not practicable to delay the case for reference to any other Officer. The Provost-Marshal, or an Assistant Provost-Marshal, or the Prosecutor cannot confirm the Proceedings of a Field General Court-Martial. **R.P., 120 (B), (C).**

As already noted in Chapter IV., the restrictions as to the trial of certain serious civil offences by Court-Martial do not apply to a Field General Court-Martial. **s. 49 (3).**

Differences in Procedure of a Field General Court-Martial.

The ordinary Rules of Procedure do not apply to these Courts, but the procedure is regulated by R.P., 105–120. The principal differences are as follows, in all other cases the procedure being similar to that of the ordinary Courts already considered in Chapter X.:—

The Court may be convened and the Proceedings recorded in a special form, given in the second Appendix to the Rules of Procedure, which is very much shorter than the one

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usually used, but if possible a short summary of the evidence of each witness is to be recorded and attached to the Proceedings. And if the Convening Officer considers that military exigencies or other circumstances prevent the use of even this abbreviated form, the Court can be carried on without any writing, except that the Provost-Marshal, or his assistant, if present, or in their absence the President, must keep such a record as is possible, giving at least the name or description of the accused, the charge, finding and sentence, with the minute of confirmation and any recommendation to mercy. The Convening Officer must report what the circumstances were which prevented the use of the prescribed form. **R.P., 107, 114** (C).

Instead of a regular charge sheet, the charge may be made briefly in any language sufficient to describe the offence and show that it was one against the Army Act.
R.P., 108.

In the event of a challenge, if the objection is allowed by any one member of the Court it is enough to carry it.
R.P., 110 (B).

Sentence of death cannot be passed unless the Court are unanimous. **R.P., 118** (A).

If at any time during the trial the Court consider that any person should be tried by an ordinary Court, they may strike his name out of the Schedule or list of accused ordered to be tried by them. **R.P., 119** (B).

QUESTIONS.

1. By whom, and under what circumstances, can a Field General Court-Martial be convened?
2. Of how many members is a Field General Court-Martial composed? What powers of punishment does it possess, and what are the regulations as to the rank of the President?

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CHAPTER XIX.

BILLETING AND IMPRESSMENT OF CARRIAGES.

(i.) Billeting.

All Officers and soldiers of the Regular Forces and their horses are entitled to be billeted ; and those of the Auxiliary Forces are similarly entitled when they are subject to military law. **ss., 105, 181 (3).**

The authority for demanding billets is the route, which is always required for the movement of troops, or, in the case of the Auxiliary Forces, an order signed by their Commanding Officer. Routes are signed by the Secretary of State for War, giving general directions to move the troops as may be necessary, the particular movement being filled in as occasion requires and signed by the Staff Officer of the General Officer ordering it.

ss. 103, 181 (4) ; Man., Chap. IX., para. 127.

The actual billets are allotted by the civil police, who decide the number to be furnished by the different innkeepers and others who are liable. The distribution of the troops among the different billets thus allotted is carried out by the Military Authorities, care being taken to keep the men of each Section, Company, etc., as much together as possible, and to quarter the Officers near their men, and the men with their horses. **s. 103 ; Second Sch. ; K.R., 1416.**

The liability to furnish billets lies on all keepers of "victualling houses," and this term includes inns, hotels, alehouses, livery stables, places where spirits, etc., are sold by retail. Troops are never to be billeted in private houses, canteens, or the residence of a Foreign Consul. Every person so liable is obliged to receive such Officers and soldiers as may be billeted on him, and to furnish lodging and attendance for each ; and, if required, to furnish each

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soldier with meals as specified in the Second Schedule of the Army Act, or to allow the soldier the necessary firing and facilities for cooking his own meal, and to find stable accommodation for each horse, together with a forage ration. **ss. 104, 106 (1) ; Second Sch.**

The prices to be paid for billets are fixed annually in a Schedule attached to the Army Annual Act, and the senior Officer or Non-Commissioned Officer of every party billeted must, before departure, or if the party remains longer than four days, then every fourth day, pay what is due to the person furnishing the billets ; to refuse or omit to do this is an offence against military law.

ss. 30 (3), 106 (3), (4), ; Army Ann. Act, Sch.

The offences which persons subject to military law can commit in connection with billets are dealt with in ss. 30 and 111.

A Constable who wrongfully billets persons not entitled, or accepts a bribe in connection with billeting, or refuses to billet anyone entitled, is liable to a fine of not less than 40s., or more than £10. An innkeeper who refuses to receive anyone lawfully billeted on him, or attempts to offer any bribe to escape his liability, is liable to a fine of not less than 40s., or more than £5. **ss. 109, 110.**

(ii.) Impressment of Carriages.

Upon production of a route, or, in the case of the Auxiliary Forces, when subject to military law, an order signed by their Commanding Officer, every Justice of the Peace is bound to issue his warrant for the impressment of such carriages as may be necessary for the movement of the regimental baggage and stores of the troops named in the route or order. The amount to be paid to the owners is fixed in the Third Schedule attached to the Act, which amount may, under certain circumstances, be increased by the proper authority, if the local price of forage renders such an increase just. A carriage is not, except in emergency, to be required to travel more than one day's journey, or twenty-five miles.

ss. 112, 113, 181 (3), (4), Third Sch.

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The King, or, in Ireland, the Lord Lieutenant, may declare that a condition of emergency exists, and may authorize any General, or Field Officer Commanding a District, to issue a requisition on a Justice of the Peace, for carriages and horses of every description, and also for all kinds of boats on any river or canal. If an order for the embodiment of the Militia is in force at the time, the requisition of emergency may extend to the purchase, as well as the hire, of the foregoing transport. **s. 115.**

Similar provisions are made for offences in regard to impressment of carriages, whether committed by persons subject to military law, constables, or others, as in the case of billets. **ss. 31, 116, 117, 118.**

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CHAPTER XX.

DUTIES IN AID OF THE CIVIL POWER.

One of the most difficult, and perhaps disagreeable, duties that troops can be called upon to perform in time of peace is to be called out in aid of the Civil Power. It must be clearly understood that in law the soldier has exactly the same liabilities—and no other—in the maintenance of public order as any ordinary citizen. A soldier does not cease to be subject to the ordinary law of the Realm by becoming subject to military law, and it is the Common Law duty of every citizen to assist the Authorities in the quelling of public disorder. Owing to the fact that soldiers, acting in their military capacity, can only act by using their arms, and that their arms are very deadly, it has been laid down on high authority that it should be the last expedient of the Civil Authorities to call out the troops to their aid.

Man., Ch. XIII., paras. 14, 34, 35 *note* **; Dicey, pp. 266, 276.**

The different kinds of public disturbances are classified in our law as unlawful assemblies, routs, riots, or insurrections.

An unlawful assembly is an assembly of three or more persons with intent to carry out any common purpose, lawful or unlawful, in such a manner and under such circumstances as to inspire fear in persons of ordinary courage or to cause them to apprehend a breach of the peace. An actual act of violence by one of the assembly is not necessary to constitute the meeting unlawful if its character is such as to alarm persons of reasonable firmness and courage.

Man., Ch. XIII., para. 2 ; Stephen, Crim., Art. 75.

A rout is an unlawful assembly which has made a motion towards the execution of the common purpose.

Stephen, Crim., Art. 76.

A riot is an unlawful assembly which has actually begun to execute a common purpose of a *private* nature by a

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breach of the peace and to the terror of the public. An assembly which was originally lawful may become a riot if they execute any such purpose to the terror of the public, even though they had not this purpose in mind when they assembled.

Man., Ch. XIII., para. 4 ; Stephen, Crim., Art. 77.

An insurrection differs from a riot in having an object of a *general* and *public* nature, and is really a species of treason known technically as levying war against the King.

Man., Ch. XIII., para. 6 ; Stephen, Crim., Art. 54 ; Archbold, p. 956.

Illustrations.

A large number of people assemble in a tumultuous manner armed with sticks and other weapons to protest against the closing of a public way, and with the intention of removing the barrier. This is an unlawful assembly.

The mob move off in the direction of the barrier, which they intend to demolish. This is a rout.

The mob, arrived at the barrier, proceed to remove it in a violent and riotous manner. This is a riot.

A party of men on strike assemble to discuss their grievances. This is *not* an unlawful assembly provided the circumstances of their meeting are not calculated to inspire terror to the public.

Inflamed by the speeches of one of the orators they rush off and attack all the bakers and other food shops in the vicinity. This is a riot.

A mob assembles and attacks a prison with a view to obtaining the release of some of the prisoners therein. This is an insurrection.

The liability of the various branches of the military forces to be called out *as such* in aid of the Civil Power is as follows :—

The Regular Forces are liable, not by any Statute, but by custom, and Parliament has recognized their employment on this duty by granting allowances.

Clode, Vol. II., p. 138.

The Army Reserve are liable. **R.F. Act., s. 5.**

The Territorial Force is not liable to be called out, no provision for this being made in the Act. **T. & R.F. Act.**

The Militia cannot be called up for this duty, it not being one of the occasions provided for in the Militia Act, 1882. If, however, any Militia unit or individual Militiamen were already called out for training or embodied, they would be available for the duty in the same way as Regulars; and the Militia has been so employed.

Clode, Vol. II. pp. 135, 138.

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The Yeomanry can be called out, with their own consent, under the Yeomanry Act. **44 Geo. III., c. 54, s. 23.**

The Volunteers cannot be called out as a military force; they may, however, avail themselves of their organization to defend an attack on their armouries or storehouses.

V.R., 386-389.

The amount of force that may be used in dispersing an unlawful assembly, or in quelling a riot or insurrection, must depend on the nature of each case, the general rule being that no more force is to be used than is necessary to effect the purpose. As stated above, there is no distinction in law between the duties and liabilities of the soldier or of any ordinary citizen in assisting to quell such disorders. The regulations direct that troops are, except in sudden and great emergency, only to be taken out to aid the Civil Power on requisition by a Magistrate or Chief Constable, and that they are to be accompanied by a Magistrate while performing the duty. This being so, it is proper for the Officer in command to place himself under the Magistrate's orders, and not to take action until requested by him to do so. This request should be in writing, but it is not legally necessary that this should be the case. The Officer is, however, responsible for what he does, and if he considers force unnecessary he need not use it. On the other hand, if force becomes necessary he is justified in using it, even though not so requested by the Magistrate, and he may be called to account for not taking the necessary action. Should his behaviour afterwards be the subject of judicial enquiry, the fact that he acted on the Magistrate's order will naturally be taken into consideration as evidence of his good faith; but he will have to answer for his own acts. The law of the land holds no one compelled to obey an illegal order, or indeed justified for his illegal action because it was ordered by a superior. Hence neither the Officer nor the men are justified in using unnecessary force, the one simply because the Magistrate directed it, or the others because the Officer ordered it.

Man., Ch. XIII., paras. 13, 35; K.R., 949, 957; Dicey, 267, 278 *et seq.*

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Unlawful assemblies and riots are misdemeanours, punishable by fine and imprisonment; in order, however, to give the Civil Power authority to disperse dangerous assemblies before they actually proceed to violence, an Act was passed in the reign of George I, called the Riot Act, which gives the Magistrate and those acting with him special power. By this Act it is provided, that whenever the Magistrate thinks it necessary, he may make the proclamation laid down in the Act. He approaches as near to the rioters as he can with safety, and having commanded silence, reads the proclamation, which charges all persons there assembled to depart at once to their habitations or lawful business. This is erroneously called "reading the Riot Act." It has been decided that the words "God save the King" at the end of the proclamation are essential, and must be read. The Magistrate should take a note of the time of making the proclamation, and preserve the paper from which read. The effect of this reading is, that if the persons assembled, to the number of twelve or more, remain together for one hour afterwards they are guilty of felony, and become liable to penal servitude for life. They may be at once apprehended by the Magistrate and any persons assisting him, and if any of them are killed or injured in the attempt to apprehend or disperse them, the Magistrate and those assisting him are held indemnified. If the reading of the proclamation is prevented by the rioters, those hindering it, and those remaining, are liable to the same punishment as if it had been read.

Man., Ch. XIII., paras. 19—22;
Stephen, Crim., Art. 78, and *note.*

It has often been supposed that after the reading of the proclamation nothing can be done, and the troops must remain passive till an hour has elapsed, even though the rioters proceed to extreme violence This view is, however, quite erroneous. The Act is not negative, and does not in any way prevent necessary force being used at any time after the reading of the proclamation, or even without its being read at all. It only provides that after the lapse of an hour the rioters become felons, and fully indemnifies those acting against them for any injuries suffered by them.

Man., Ch. XIII., paras. 23, 24; Dicey, p. 268;
Clode, Vol. II., pp. 129, 130

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The following rules are laid down in the King's Regulations for the guidance of troops acting in aid of the Civil Power. Troops are not to be taken out on this duty, except in cases of great and sudden emergency, without a requisition in writing or by telegram of a Magistrate or Chief Constable. The Military Authorities will fix the number, and arrange for their despatch, and will inform the Civil Authority of the time they will arrive; the latter must arrange for their accommodation, food, etc., and for conducting them to the place where their services are required.

K.R., 949, 950; Clode, Vol. II., p. 143.

The troops must march in regular military formation, with the usual precautions, and must be accompanied by a Magistrate. The detachment will be told off into four sections, each under an Officer or Non-Commissioned Officer, if the total strength is not more than twenty files; if it exceeds that number it will be told off into more than four sections. **K.R., 953 & 961.**

If the police are unable to cope with the disturbance, the Magistrate will request the Commanding Officer "to take action." As already stated this request should be in writing, but not necessarily so. The Officer will then act according to his discretion. If he thinks immediate action unnecessary, he need not act at once; if he thinks it necessary to fire, he will give the order. If he considers a small amount of fire will suffice, he will only order named files or sections to fire; and they only will fire, and only by order of their Officer; and all action will cease as soon as the Officer thinks further force unnecessary. Before fire is opened, the mob should be warned that it will be effective. Fire must not be directed over the heads of the crowd, as that might only injure persons not engaged in the riot.

K.R., 956, 957, 960, 962, 965.

The existence of an armed insurrection would justify the use of any degree of force necessary to effectually suppress it. **Man., Ch. XIII., para. 33.** In times of general insurrection it has been often necessary for the Executive to employ what is known as Martial Law. This is a term about which much confusion exists. Martial Law, in the proper sense of the term, in which it means the suspension of ordinary law and

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the temporary government of the country, or parts of it by Military Courts, is unknown to our English Law. Foreign Countries recognize what is called "a state of siege," under which the authority of the Civil Power passes temporarily into the hands of the Military; but we have nothing equivalent to this. What is meant by Martial Law in English Jurisprudence is the Common Law right of the Crown and its servants to repel force by force in case of insurrection or any violent resistance of the law.

Man, Ch. I., para. 17; Dicey, pp. 265, 266.

Thus, when Martial Law has been proclaimed in our Colonies (as it was in Cape Colony during the late Boer War), it is an announcement to the public that the provisions of the Civil Law are inadequate to meet the situation, and an intimation to the Military Authorities that the Executive is willing that they should take exceptional measures to cope with the circumstances which the Civil Law is unable to deal with. Martial Law thus does not replace the Civil Government, but only supplements it. **Mart. Law, p. 78.**

Under Martial Law, thus proclaimed, civil rights and liberties are in abeyance, and the Military Authorities can arrest suspected persons without warrant. In the United Kingdom, rebels when arrested would always be handed over to the Civil Courts for trial, as our system of Jurisprudence does not sanction Military Courts dealing with any such persons not subject to Military Law. **Clode, Vol. II., p. 169.** In the Colonies, however, under Martial Law, Military Courts have been formed with power of dealing with persons committing offences against it. Such Courts were established at the Cape. The offences with which they could deal were :—

(*a*) Treasonable or seditious acts or language.
(*b*) Joining, or aiding the enemy, or carrying on trade with him.
(*c*) Destroying railways, or other acts endangering the forces.
(*d*) Serious breaches of Martial Law Regulations.

Mart. Law, p. 101.

Such Courts may be composed of Officers or civilians, or a mixture ; their procedure will as far as possible follow that

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of a Court-Martial, and care must be taken to afford the accused every reasonable facility for making his defence. Officers administering Martial Law must be very careful to see that the offence was committed, and the accused tried, within a proclaimed district. It must be remembered that, though necessary, this action under Martial Law, is strictly speaking, illegal, but those who have acted *bonâ fide* in the interests of the State have nothing to fear; for an Act of Indemnity is always subsequently passed, justifying the measures taken; and, even failing this, the Crown can refuse to prosecute, by a *nolle prosequi*, or can nullify an unjust conviction, by a free pardon.

Man, Ch I., para. 17 (and *note*) **; Mart. Law, pp 81—84 ; Dicey, pp. 47, 218,** *et seq.* **; 281,** and *note* **; Clode, Vol. II., p. 162.**

QUESTIONS.

1. A party, consisting of one Officer and 30 infantry soldiers, is ordered to proceed by road to aid the Civil Power. Give briefly the principal points in the King's Regulations, which guide the Officer in carrying out this duty.
2. What effect has the reading of the Proclamation contained in the Riot Act on the legal position of the rioters? Is it absolutely necessary that such Proclamation should have been read before forcible measures can be adopted?
3. Explain what is meant by Martial Law, and give an example of its application.

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CHAPTER XXI.

HISTORY OF MILITARY LAW.

In the early days of our history Military Law, as distinct from the ordinary law, only existed during war time. The *fyrd* of Anglo-Saxon days—from which our present Militia has descended—was organized and governed by the ordinary laws of the land; and in later days the existence of the feudal levies was based on the ordinary law dealing with the tenure of land. When war broke out and these troops were called out for service they were governed, while in the field, by Ordinances or Articles of War made by the Crown, or by the Commander-in-Chief under authority delegated to him by the Crown. These Articles only remained in force so long as the war lasted, and when the troops were disbanded their operation ceased. Thus in time of peace there was no Military Law in those days; although various attempts were made by the more despotic of our Sovereigns to enforce Military (or as it was then called "Martial") Law by the prerogative of the Crown during peace time.

Man., Ch. II., paras. 3, 7.

On the establishment of a standing army after the Restoration in 1660, the necessity for special powers to keep this force in "an exact state of discipline" soon became felt, and on the 3rd April, 1689, the first Mutiny Act was passed to punish mutiny and desertion. This Act was only to last six months; but on its expiration another was passed, and with a few exceptions, a Mutiny Act was passed annually till 1878, inclusive. The jealousy of Parliament over the control of the military forces of the Crown induced them to always limit the duration of the Act to one year.

Man., Ch. II., paras. 16—20.

The earlier Mutiny Acts did not extend abroad; but until 1712 the nation was almost constantly at war and the troops on active service were governed by Articles of War

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made as of old under the prerogative of the Crown. In this year statutory power was given in the Mutiny Act to the Crown to make Articles of War binding on the troops in time of peace out of the United Kingdom. This power was extended to troops at home by the Mutiny Act, 1715. In 1718 the Mutiny Act was extended to apply to troops in the Colonies, who were thus governed by the Act and the Statutory Articles of War, made by the Crown under it, until 1803; the prerogative power of the Crown to govern the troops in foreign countries during war by Articles of War still remaining. **Man. Ch. II., paras. 22—29.**

In 1803 the Mutiny Act and the Statutory Articles of War were extended to the Army, whether serving within or without the Crown's dominions; and thus the prerogative power of making Articles of War in time of war was superseded. **Man., Ch. II., paras. 31, 32.**

Things continued thus until 1879, when the inconvenience of having the army governed partly by an Act of Parliament and partly by Articles of War led to their being combined in one statute called the Army Discipline and Regulation Act. In order to obviate the necessity of annually passing this long Act through Parliament, while at the same time continuing the constitutional control of Parliament over the standing army, it was enacted that the provisions of the Act should be continued from year to year by a short Act, called the Army Discipline and Regulation Commencement Act. After a lapse of two years the Army Discipline and Regulation Act was repealed and its provisions re-enacted in the present Army Act, which is similarly continued in force yearly by the Army (Annual) Act, as described in Chapter II.

Man., Ch. II., paras. 33—35.

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CHAPTER XXII.

THE LAW RELATING TO THE RESERVE FORCES.

The Reserve Forces are governed by the Reserve Forces Act, 1882, and other short Acts passed in 1890, 1898, 1900, and 1906; and the Territorial and Reserve Forces Act, 1907. As already stated in Chapter III., they are, under certain circumstances, subject to military law, and are then subject to the provisions of the Army Act. **s. 176 (5).**

Under the Act of 1882 it is lawful for the Sovereign to keep up an Army Reserve of such numbers as may be provided by Parliament, consisting of two classes, viz.:—

Class I.—Men who, having served in the Regular Forces, are either transferred under the Army Act, or enlisted or re-engaged under this Act; and who are liable to be called out for permanent service anywhere.

Class II.—Out-pensioners of Chelsea or Greenwich Hospital (Marines), or men who, having served their full time in the Army, are enlisted or re-engaged under this Act, and who are only liable for service in the United Kingdom. **R.F. Act, s. 3.**

Under the Territorial and Reserve Forces Act, men who have never served in the Regular Forces can also be enlisted into Class I. of the Reserve and are known as "Special Reservists." Such men enlist for six years, and may re-engage for further periods of four years.

T. & R.F. Act, s. 30 (1); A.O. $\frac{2}{05}$.

All men of the Army Reserve can be called out:—

(i.) Annually, for training for twelve days or twenty drills, and when so called out may be attached to a body of Regular, or Auxiliary Forces.

R.F. Act, s. 11.

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Men of the Special Reserve may also be called out for six months' training on enlistment, and fifteen or twenty days' annual training, and in addition for special courses of training for any periods not exceeding six months in all.

T. & R.F. Act, s. 30; A.O. $\frac{2}{08}$

(ii.) In aid of the Civil Power, by the Secretary of State, or Lord Lieutenant of Ireland; or as far as regards the men living in any town or district, by the Officer Commanding the troops there.

R.F. Act, s. 5.

(iii.) On permanent service, by Proclamation issued by the King in Council, in time of great emergency or national danger. If Parliament is sitting the occasion must first be communicated to them; and if not sitting, Parliament must be assembled within ten days to have the communication made to them. Men thus called out are liable to serve till no longer required, or until their service has expired under the Army Act, s. 87; or the King may issue a proclamation that the Special Reserves only are to cease to be so called out.

R.F. Act, ss. 12, 13; T. & R.F. Act, s. 30 (5).

A certain number of men in the 1st Class Reserve, not exceeding 6,000 in all, whose character on transfer was not less than "good," may agree in writing to be liable, during their first two years' service in the Reserve, to be called out for service abroad in warlike operations. These men may be called out without the proclamation above mentioned, and it is not necessary to assemble Parliament, but the exercise of the power must be reported to Parliament as soon as possible. Men thus called out are not liable to serve more than a year, and may revoke their agreement by three months' notice in writing. Special Reservists, to the number of 4,000, may make a similar agreement for the whole or any part of their reserve service.

R.F. & M. Act, s. 1; A.R. Reg., 1, 8; T. & R.F. Act, s. 32.

It is lawful for the Secretary of State to make regulations under the Act for the government, discipline, and pay of the Reserve. Under the regulations now in force the

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Army Reserve (other than the Special Reserve) consists of the following classes and sections :—

Class I.

Section A.—Consisting of the men referred to above, who are liable to be called out for small wars. On completing their first two years' service in the Reserve they are transferred to Section B.

Section B.—The ordinary Reserve men, transferred under the terms of their original enlistment, on the termination of their Army service ; or who have been allowed to convert their Colour Service into Reserve Service, under Army Act s. 78 (1).

Section D.—Men who on the termination of their limited engagement, enlist in the Reserve for a further period of four years. Certain artificers are allowed to re-engage in this section up to 50 years of age. **A.R Reg. 1, 18.**

Class II. is practically non-existent.

Man., Ch. XI., para. 20.

The various Militia units, existing at the time the Territorial and Reserve Forces Act was passed, have (with a few exceptions) been converted into Special Reserve Units and the men belonging to them are asked at the end of this year's training to enlist into the Special Reserve. Those units not thus converted are to be disbanded. **A.O. $\frac{2}{68}$.**

A Special Reservist who enlists into the Regular Forces is thereupon deemed to be discharged from the Reserve.

T. & R.F. Act, s. 30 (6).

Any Reserve man who—

(*a*) Fails on two consecutive occasions to comply with any order respecting the pay of the Reserve ;

(*b*) When ordered to attend at any place, without reasonable excuse fails to do so ;

(*c*) Uses insubordinate language, or behaves in an insubordinate manner, to any Officer or Non-Commissioned Officer acting under the Act in the execution of his office, and who would be his superior Officer if he were under military law ;

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(*d*) By any fraudulent means obtains, or is accessory to obtaining, any pay or other money;

(*e*) Fails without reasonable excuse to comply with orders or regulations made under the Act;

is liable to be tried by Court-Martial and to suffer imprisonment, or by a Court of Summary Jurisdiction and to be fined not less than 40s. or more than £25, or in default imprisonment as allowed by law. **R.F. Act, s. 6.**

Men who without leave, except through sickness or other reasonable excuse, fail to attend when called out, are guilty of the following offences :—

(i.) If called out on permanent service or in aid of Civil Power — Desertion, or Absence without leave, as may be proved.

(ii.) If called out for annual training — Absence without leave.

and are liable to be tried by Court-Martial under ss. 12 or 15 of the Army Act, and punished accordingly; or by a Court of Summary Jurisdiction and fined not less than 40s. or more than £25, or in default, imprisonment, as allowed by law for non-payment of the fine. **R.F. Act, s. 15**

The law as to apprehension of absentees and deserters; Courts of Inquiry on their illegal absence; offences committed by civilians in assisting desertion, etc., is similar to that already described for the Regular Forces.

R.F. Act, ss. 16, 17, 19.

A Reservist is forbidden to make away with any military decoration granted to him, or to quit the United Kingdom without leave. **A.R. Reg. 55, 57.**

An offender may not be tried by both a Court-Martial and a Court of Summary Jurisdiction; and is not to be tried by the latter without the written sanction of an Officer having power to direct his trial by Court-Martial, or some superior authority. Proceedings may be instituted against him, although his reserve service has expired, and notwithstanding any limitation in any other Act, at any time within two months of his offence becoming known to

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his Commanding Officer, if he is then apprehended, or if not, then within two months of his apprehension.

R.F. Act, s. 26 and *note.*

If a Non-Commissioned Officer in the Reserve is tried by Court-Martial and sentenced to imprisonment he forfeits his rank, and if convicted by the Civil Power is liable to be reduced if the General Officer Commanding the District thinks it desirable. **A.R. Reg. 53, 54.**

With respect to the notices required by the Act it is enacted as follows:—

(1) A notice may be served by being sent by registered post to a man's last registered place of abode.

(2) Evidence of delivery of such letter shall be evidence that the notice was brought to his knowledge.

(3) Publication of a notice in the prescribed manner in the parish in which his last registered place of abode is situated, shall be deemed sufficient notice to him.

(4) Constables and others are obliged, under penalty of a fine of twenty pounds, to assist in publishing and serving notices. **R F. Act, s. 24**

Questions.

1. Give a short general account of the Reserves for the Regular Army.
2. Explain the meaning of I. Class Army Reserve.
3. Of what men does Section B., Class I., Army Reserve, consist? What training are they liable to?
4. Of what men is Section A., Class I., Army Reserve, composed? What are their liabilities as regards service?
5. How much time have the men in the different Reserves usually spent in military service?
6. Distinguish in detail between Sections A, B, and D, of the Army Reserve.

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CHAPTER XXIII.

THE LAW RELATING TO THE MILITIA.

In consequence of the passing of the Territorial and Reserve Forces Act of 1907, the Militia, as we have hitherto known it, has ceased to exist, the units—with some few exceptions which have been disbanded—have been converted into units of the Special Reserves, and the law relating to them as such has been explained in the last Chapter. **T. & R.F. Act, s. 30; A.O. $\frac{2}{08}$.**

It must not, however, be overlooked that though by this momentous change the Militia no longer exists, the laws relating to this Force have not been repealed, so that such a Force could be again raised at any time without fresh legislation. And as, therefore, liability to serve in the Militia still legally continues, the following few remarks as to this liability may be of interest.

The Militia, as we used the term, was what was known as the General or Regular Militia, the descendants of the old Trained Bands; but there is also known to the law another branch called the Local Militia, which is in effect the old "General Levy"; this branch is however in abeyance at the present time. **Man., Ch. IX., para. 62**

In these days, when much discussion is heard as to the advisability of compulsory service in our Army, it cannot be too well understood that there is nothing new, or contrary to the principles of the Constitution, in this, and that the liability to serve in the Militia has existed from the earliest known period of our history, and that such liability exists both at Common Law, and by Statute. By Statute Law, all able-bodied men between the ages of 18 and 30, are, with a few exceptions, liable to serve in the General Militia for five years. The number to be furnished by each county (called the quota) is fixed, and the men required are obtained either

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as volunteers or by ballot. This Statute has never been repealed, but for many years an Act was passed annually suspending the operation of the ballot, unless ordered by an Order in Council, and the Act of 1865 has since been annually continued by the Expiring Laws Continuance Act.

Man., Ch IX., paras. 67, 71.

Service in the old general levy has always existed by Common Law, and several Acts have been passed regulating the raising of this force, under the name of the Local Militia. The quota from each county is fixed by Parliament, and men are liable to be balloted for, between the ages of 18 and 30, and if drawn must serve for four years, without power of finding a substitute; the exemptions being very few. Effective yeomanry and volunteers in the county are accepted as part of the quota. This branch of the Militia has not been raised since 1815; the operation of the ballot being annually suspended till a few years ago, since when nothing has been done in the matter.

Man., Ch IX., paras. 103-105.

Under an Act passed in 1902, a Reserve Division of the Militia was created, composed of:—

(i.) Men discharged from the Army after at least three years colour service, provided sixteen years have elapsed since their first attestation.

(ii.) Men who have served at least ten years in the Militia.

(iii.) Men of the Royal Garrison Regiment, who, instead of extending their service, joined this Reserve to complete a total service of twenty-one years.

The term of enlistment, or re-engagement, was four years. Men in this Reserve may be called out for service whenever the Militia is embodied, and for training for three days musketry in the infantry, or a period not exceeding fourteen days every second year in the case of the other arms of the Service.

M. & Y. Act, 02, s. 1; A.O. $\frac{36}{03}$; M.R., 596, 605.

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CHAPTER XXIV.

THE LAW RELATING TO THE TERRITORIAL FORCES.

Under the Territorial and Reserve Forces Act of 1907, it has become lawful for the King to maintain a Force, called the "Territorial Force," which in practice is to take the place of the Yeomanry and Volunteers, which have hitherto existed, and who are now invited to join this new Force. For the purpose of raising and administering the Territorial Force, Associations have been formed in each County in the United Kingdom, whose duty it is, in conjunction with the Army Council, to recruit, organize, and equip this Force and make the necessary provision for ranges, buildings, camping grounds, etc., required. **T. & R.F. Act, ss. 1, 2, 6.**

Men are enlisted for a county, and appointed to a unit belonging to the county. The period of enlistment is four years; and in his last year of service a man may re engage for a further period not exceeding four years.

T. & R.F. Act, s. 9 (1).

The Force is liable to serve in any part of the United Kingdom, but men can only be sent abroad with their own consent. **T. & R.F. Act, s. 13.**

Officers and men are subject to Military Law under the conditions stated in Chapter III. **ss. 175 (3A), 176 (6A).**

Men of the Territorial Force are liable to be called up—

(i.) For preliminary training, during his first year's service, for such periods as may be prescribed; besides attending the number of drills prescribed for a recruit.

(ii.) For annual training, for not less than eight or more than fifteen (in the mounted branches eighteen) days every year; besides attending the number of drills prescribed.

(iii.) For embodiment; whenever the Army Reserve are called out by proclamation.

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Modifications in the period of annual training may be made, in the case of a unit by the General Officer Commanding, or in the case of an individual by his Commanding Officer. His Majesty may, by Order in Council, extend the annual training for the whole or any part of the Force to any period not exceeding thirty days, or may reduce it or dispense with it altogether. **T. & R.F. Act, ss. 14, 15, 17.**

Unless the Army Reserve are called out, a man can claim his discharge at any time on—

(i.) Giving his Commanding Officer three months notice in writing;

(ii.) Paying to the County Association such sum, not exceeding £5, as may be prescribed; and

(iii.) Giving up in good order his arms, clothing, and equipment, or paying their value.

T. & R.F. Act, s. 9 (3).

Any man, who, except through sickness or other reasonable excuse, fails to appear when embodied is guilty of desertion, or absence without leave, as may be proved, and is liable to be tried by Court-Martial, and punished accordingly. If, similarly, he fails to attend for preliminary or annual training or the prescribed number of drills, he is liable to be tried by a Court of Summary Jurisdiction and pay a fine not exceeding £5. **T. & R.F. Act, ss. 20, 21.**

Any offence against the part of the Act dealing with the Territorial Forces, and any offence under the Army Act, committed by a man of the Territorial Force when not embodied, which is cognizable by a Court-Martial, can be dealt with by a Court of Summary Jurisdiction; and on conviction the offender is liable to imprisonment for a term not exceeding three months, or a fine not exceeding £20, or both. **T. & R.F. Act, s. 24.**

Officers and men of the Territorial Force are exempt from serving on juries and as peace or parish officers; and Field Officers are exempt from serving as High Sheriff.

T. & R.F. Act, s. 23 (4).

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CHAPTER XXV.

THE RELATION BETWEEN CIVIL AND MILITARY LAW.

It has already been pointed out that Officers and soldiers by being subject to military law do not in any way cease to be subject to civil law, but continue to share the rights and duties of other citizens. In all cases of conflict between the civil law and the military law, the former prevails.

s. 162; Dicey, pp. 276. 277; Clode, Vol. I., p. 206.

Thus the Civil Courts have jurisdiction over Officers and men in the Army, and the higher Courts of Judicature have the same power of supervising the exercise of authority by Military Courts and individual Officers as they have over the inferior Civil Courts and Magistrates. Any person therefore who considers himself wronged by the action of a Court-Martial, or an Officer, can obtain redress through the ordinary process of law. A Civil Court, however, will not take cognizance of any matter affecting the purely military status of an individual, or rights or privileges of a purely military nature; as it is held that by voluntarily subjecting himself to military law, he must accept the consequences so far as mere military rights are concerned.

Man., Ch. VIII., paras. 1. 2; Dicey, pp. 283, 284. Clode, Vol. I., p. 206.

Illustrations.

An Officer sentenced by Court-Martial to be "Cashiered"—no action will lie.
A Non-commissioned Officer sentenced to "Reduction to the ranks"—no action will lie.
A soldier sentenced to "Imprisonment"—an action will lie.
A soldier has his pay forfeited for absence by Royal Warrant—no action will lie.

The proceedings by which the Civil Courts supervise the actions of Courts-Martial and individual Officers, may be either criminal or civil. Criminal proceedings take the form of a prosecution, or an indictment on a criminal charge;

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civil proceedings may be either preventive, *i.e.*, to restrain the commission or continuance of an injury, or remedial, *i.e.*, to give a remedy for an injury actually suffered.

Man., Ch. VIII., para. 8.

Preventive measures are taken by writs issuing from the High Court; (1) A *Writ of Prohibition*, forbidding the Court or Officer to whom it is addressed, to proceed further in the matter; (2) A *Writ of Certiorari*, commanding the Court or Officer to certify to the High Court a record of the matter, *e.g.*, a Court-Martial sentence, in order that if illegal it may be quashed; (3) A *Writ of Habeas Corpus*, issued to any one having another in custody, commanding him to produce his prisoner in Court and to state the authority for his detention. If the Court is not satisfied that the grounds for his detention are sufficient, they will order the prisoner to be discharged.

Man., Ch. VIII., paras. 9, 17, 23.

Remedial measures take the form usually of an action for damages. All the members of a Court-Martial, or an individual Officer, who act without jurisdiction, or in excess of their jurisdiction, are liable to an action for damages at the instance of the person injured thereby. In the case of a Court-Martial, he may bring his action against the whole Court collectively, or against any individual member; but if in the first instance he only brings his action against one or more, and obtains judgment, he cannot afterwards sue the others. **Man., Ch. VIII., paras. 40, 42,** *note.*

Courts-Martial and individual Officers may expose themselves to the above-mentioned proceedings by acting without jurisdiction, or by acting in excess of their jurisdiction.

Illustrations.

A General Court-Martial composed of three Field Officers, one Captain, and five Subalterns would act without jurisdiction.

A District Court-Martial imprisoning a civilian witness for contempt of Court would act without jurisdiction.

A Commanding Officer punishing a camp follower on active service would act without jurisdiction.

A Regimental Court-Martial sentencing an accused to six months' imprisonment would act in excess of their jurisdiction.

Members of Courts-Martial, like all other judicial Officers, are not held responsible for mere errors of judgment, provided they act within the bounds of their jurisdiction. The Courts are moreover reluctant to interfere with the exercise of

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military authority over persons subject to military law, provided the exercise of this authority is not carried out with oppression or cruelty; they will also recognise the "Custom of the Service" as a justification for acts done in accordance therewith, provided the Custom be not repugnant to the law. **Man., Ch. VIII., paras. 3-7, 58, 63.**

It is a presumption of law that *omnia rite esse acta, i.e.*, that when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed the forms necessary for its validity were complied with; and that anyone acting in an official or public capacity has been duly appointed. The Army Act expressly provides that any power or jurisdiction given to any person holding any military office, may be exercised by any one authorized either by the Custom of the Service, or the Rules of Procedure, to exercise this power for the time being; and that warrants or other orders authorized to be made or issued by the *Commander-in-Chief, or other named officials, may be issued by their Staff Officers, and shall not be invalid for mere irregularities of form.

ss. 171, 172; Stephen, Art. 101; Archbold, p. 276.

No action or prosecution, or other proceeding can be brought against any person in respect of any act done, or any neglect, in execution of his powers under the Army Act, unless it is commenced within six months of the alleged injury, or in case of a continuing injury (*e.g.*, imprisonment), within six months of its ceasing. **s. 170.**

QUESTION.

1. Explain the relation in which Military Law stands to Civil Law, with special reference to the liability of persons subject to the former to be brought to trial for offences, before either Civil or Military Courts.

* *Vide* **Note on p. 10.**

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CHAPTER XXVI.

REGULATIONS UNDER THE REGIMENTAL DEBTS ACT, 1893.

On the death of a person subject to Military Law, a Committee of Adjustment will, as soon as possible, secure and make an inventory of all his personal effects, in camp or quarters at home, or within the Station or Command abroad; and will ascertain and pay all the preferential charges on his property. Medals and decorations are not included in the personal estate, but will be dealt with as provided by K.R., para. 1759. **R.D. Act, ss 1, 11.**

The Committee of Adjustment will consist of three Officers, the President if possible not to be below the rank of Captain, or if the deceased was an officer, below that of Major. It will be appointed by the following Officers :—

(*a*). If deceased was serving with his unit, by the Commanding Officer.

(*b*). If the death occurred at sea, by the Officer Commanding the troops on board.

(*c*). In other cases, by the Officer in immediate command. **R.D. Reg., 1, 2.**

By the term "preferential charges" are meant any of the following liabilities, which are payable in preference to all other debts in the order stated :—

(1) Expenses of last illness and funeral.

(2) Sums due in respect of—

(*a*). Quarters;

(*b*). Mess, band, or other regimental accounts.

(*c*). Military clothing or appointments, not exceeding a sum equal to six months pay, and having become due within eighteen months of his death.

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And abroad:

(3) Servants' wages, not exceeding two months each.

(4) Household expenses, incurred within a month of death, or last issue of pay. **R.D. Act, s. 2.**

If the widow or one of the next of kin, or their representative, pays or secures the preferential charges, the Committee of Adjustment shall not interfere further. If these charges are not paid within a month after the death, they will proceed to pay them.

R.D. Act, ss. 5, 6; R.D. Reg., 12.

Only the balance, after paying these charges, is liable to probate duty, and when this surplus does not exceed £100, no duty is payable. **R.D. Act, ss. 3, 16.**

When a man deserts, is absent twenty-one days, is convicted of felony by the Civil Power, or is delivered up as an apprentice, a similar Committee of Adjustment is appointed to dispose of his effects, which are sold and the proceeds credited to his Non-effective Account. Any balance may be paid to the apprentice; or a deserter or absentee who rejoins within a year; or to the man convicted of felony after he has undergone his sentence.

R.D. Act, s. 23; R.D. Reg. 36–48.

In the case of a person subject to military law becoming insane a similar course is adopted, and the balance applied for the benefit of the insane person. **R.D. Act, s. 24.**

When any surplus remains undisposed of, a notice is published annually for the next six years in the London Gazette; and if not claimed within six months after the last notice, is applied for the benefit of widows and children of men dying on service.

R.D. Act, s. 10; R.D. Reg., 30; Man., pp. 686, 687.

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APPENDICES.

PAPERS SET AT THE EXAMINATION FOR PROMOTION.

FULLY ANSWERED, WITH REFERENCES TO THE OFFICIAL BOOKS.*

APPENDIX A.—LIEUTENANTS.
,, B.—CAPTAINS.

* "The Manual of Military Law" and "The King's Regulations."

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APPENDIX A.

MAY, 1903.

LIEUTENANTS.

FIRST PAPER (WITH BOOKS).

(Time Allowed—One hour.)

Q. 1. Explain the meaning of the terms "summary conviction" and "previous conviction," and point out when a conviction by the Civil Power would be reckoned as a "previous conviction."

A 1. A "summary conviction" means a conviction by a Court of Summary Jurisdiction. **s. 190 (35)**, *note.*

A "previous conviction" means a conviction by a Court-Martial or by a Civil Court since enlistment. Only civil convictions which have entailed imprisonment exceeding seven days are produced in evidence as "previous convictions" on his trial by Court-Martial.

R.P., App. II., 574, 575; K.R., 1916.

Q. 2. Explain how the power of a Commanding Officer as laid down in the Army Act is modified by the King's Regulations in respect of the awards of detention and fine.

A. 2. By the Army Act any Commanding Officer can award fourteen days' detention for any offence except absence; the King's Regulations, however, lay down that detention should not be awarded for simple drunkenness unless the man is liable to trial or has 20s. unpaid fines; and that Commanding Officers under the rank of Major are not to award more than seven days' detention.

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By the Army Act a fine not exceeding 10s. may be awarded for any offence of drunkenness. By the King's Regulations, however, the amount of the fine is fixed by a scale therein prescribed.

s. 46 (2), (5); K.R., 493 (i), 497, 512.

Q. 3. A soldier of the regular forces is found to be drawing pay as a reservist. What offences has he been guilty of, and under what sections of the Army Act would he be charged before a Court-Martial?

A. 3. Under s. 33 for making a false answer on attestation

Q. 4. Distinguish between "scandalous conduct," "disgraceful conduct," and "conduct to the prejudice of good order and military discipline." Give the maximum punishments that may be awarded for offences coming under the above general headings.

A. 4. "Scandalous conduct" can only be charged against an Officer, and means conduct of such a disreputable kind that it renders him unfit to any longer hold a commission. An officer convicted of this offence *must* be cashiered.

s. 16; O'Dowd, p. 66.

"Disgraceful conduct" means an offence under ss. 17 or 18. Offences under the former section include theft or embezzlement or other fraudulent dealing with public or regimental money or goods by a person charged with the care or distribution of the same. The maximum penalty is penal servitude for life. Only a soldier can be charged under s. 18, which includes all offences of a disgraceful, fraudulent, cruel or indecent nature. Maximum penalty, two years' imprisonment. **ss. 17, 18.**

"Conduct to the prejudice of good order and military discipline" includes all minor irregularities and conduct which is prejudicial to military discipline, but not merely of a social kind. No crime which is an offence against any other section of the Act can be charged under this

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section. Maximum punishment, cashiering for an Officer, or two years' imprisonment for a soldier. **s. 40.**

Q. 5. Under what circumstances is an accused, who has elected to give evidence himself, liable to be cross-examined as to his character?

A. 5. Only if

(1) Proof that he had committed another offence would be admissible to show he is guilty of the present charge.

(2) He, or his counsel, has asked questions, or given evidence, to establish his good character, or the conduct of the defence has been to make imputations on the character of the prosecutor or his witnesses.

(3) He has given evidence against any other person charged with the same offence. **R.P., 80 (3).**

SECOND PAPER.

(*Time allowed—One hour.*)

Q. 1. Under what circumstances may a soldier in military custody be required to perform military duty?

A. 1. He is not to perform any duty beyond handing over any cash, stores or accounts for which he may be responsible, and is only to bear arms on the line of march, or in an emergency by order of his Commanding Officer, or by order of the Governor, in a military prison, or of the Commandant, in a detention barrack, for exercise. **K.R., 482.**

Q. 2. By whom is the *summary of evidence* prepared, and to what uses may it be applied when laid before a Court-Martial?

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A. 2. It is prepared by the accused's Commanding Officer or some other Officer deputed by him (in practice the Adjutant). It is used at the trial, if the prisoner pleads "*not guilty*," in checking the evidence given by the witnesses, who will be called on to explain any discrepancy between their statement in the summary and their evidence given to the Court; if the accused pleads "*guilty*" it is read to the Court to let them see the circumstances under which the offence was committed and thus guide them in determining the sentence.

R.P., 17 (E) **and** *note*, **37** (B).

Q. 3. Who appoints the Prosecutor for a Court-Martial? Has the accused a right to challenge the person appointed? Under what circumstances would it be necessary for the Prosecutor to be sworn?

A. 3. In practice the Adjutant prosecutes, but the Convening Officer is responsible that a proper person is appointed. The accused cannot challenge the Prosecutor. If he is to give evidence the Prosecutor must be sworn.

R.P., 24 (*note*), **25** (B), **39** (C).

Q. 4. Under what circumstances would a Commanding Officer be justified in awarding detention for the offence of drunkenness?

A. 4. If the man is liable to trial, or if he owes 20s. or upwards for unpaid fines. **K.R., 497** C.

Q. 5. Explain the circumstances under which a soldier of the regular forces would forfeit one, two, and three days' pay respectively.

A. 5. He would forfeit one day's pay if he had been absent for six hours either wholly in one day, or partly in one day and partly in another; or if by reason of his absence he missed a duty which was thereby thrown on another.

He would forfeit two days' pay if he had been absent twelve hours partly in one day and partly in another; or for upwards of six hours partly in

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one day and partly in another and had missed a duty which was thereby thrown on another.

He would forfeit three days' pay if his absence extended into three different days, whether he missed a duty or not.

ss. 138 (1), 140 (2) ; R.W., 902 (*a*), 903.

Q. 6. Explain how the position of a Warrant Officer differs from that of an ordinary non-commissioned officer in respect of trial and punishment by Court-Martial.

A. 6. A Warrant Officer holding an honorary commission is subject to Military Law as an Officer and can only be tried by a General, or Field General Court-Martial, and is only liable to the same punishments as an Officer. Other Warrant Officers cannot be tried by a Regimental Court-Martial, and, if tried by a District Court-Martial, the President cannot in any case be under the rank of Captain, and the Court can only award the following punishments:—Forfeitures, fines, stoppages, dismissal, reduction to the bottom or any other place in his rank, or to an inferior class of Warrant Officer (if any) ; or, reduction to a lower grade, or if originally enlisted as a soldier, to the ranks. **ss. 182, 190 (4).**

Q. 7. Describe the course to be pursued by a Court-Martial when (1) the finding, (2) the sentence is sent back for revision by the Confirming Officer.

A. 7. (1) The Court re-assemble and consider the remarks of the Confirming Officer ; they cannot take any fresh evidence, and the proceedings are conducted in closed Court ; they either adhere respectfully to their former finding, or revoke it and come to a new one. If this finding requires a sentence they must pass sentence afresh, even though in the same words as before, as the revocation of the finding revokes the former sentence. The new sen-

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tence may be less, but cannot be more than the first one.

(2) The Court re-assemble as above, and, having considered the remarks of the Confirming Officer, can either respectfully adhere to their former sentence, or revoke it, and pass a fresh sentence, which, however, must not be in excess of the former sentence.

s. 54 (2); R.P., 51 (B), 52.

Q. 8. Under what circumstances are *alternative* charges framed? When loss or damage is the subject of a charge, what is the general rule as to affixing a value to the articles lost or damaged?

A. 8. When it is doubtful whether the facts proved by the evidence are more correctly described by one word or expression than another, alternative charges may be framed, each charge containing one of the expressions which appear applicable to the facts capable of being proved, *e.g.*, "Stealing," etc., or "Receiving knowing them to have been stolen," etc. **R.P., App. I. (6).**

A value is only put to those articles lost or damaged in respect of which it is desired that the Court should award stoppages; in the case of kit, etc., this would only include articles which are Government property, as the accused would have to replace those which are his own property at his own expense, without any sentence of the Court.

R.P., App. I. (23); K.R., 563, 564.

Q. 9. Define hearsay evidence, and state the exceptional circumstances under which such evidence is admissible.

A. 9. Hearsay is the oral or written statement of a person not before the Court, conveyed to the Court either by a witness or the instrumentality of a document.

Man., Ch. VI., para. 46; Powell, p. 132.

The principal exceptions to the rule that hearsay is inadmissible are: (1) Dying declarations; (2) Statements forming part of the *res gestæ*;

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(3) Statements against self-interest by a person since deceased; (4) Statements made in the course of duty. **Man., Ch. VI., paras. 49—56; Powell, pp. 171—178, 187; Stephen, Arts. 8, 11, 26—28.**

Q. 10. Distinguish between the crimes of fraudulent enlistment and false answer on attestation, and between embezzlement and theft.

A. 10. *Fraudulent enlistment* is the offence committed by a soldier of the regular forces, or a soldier of the Territorial Force when embodied, or an embodied militiaman, or a yeoman called out on actual military service, who, without fulfilling the conditions enabling him to do so, enlists or enrols into any part of His Majesty's forces, or in any force raised in India or a Colony. **s. 13.**

False answer on attestation is the offence committed by an army reserve man, or militiaman not embodied, a yeoman not on service as above, or volunteer, or a sailor of the Royal Navy, or a marine, who enlists and makes a false answer to the question whether he belongs, or has belonged, to any of these forces. It also, of course, includes any untrue answer to any other question in the attestation paper. **s. 33.**

Embezzlement is the unlawful appropriation to his own use by a servant or clerk, of money or goods received by him for, and on account of, his master or employer.

Man., Ch. VII., para. 59; Harris, p. 226.

Theft is the wilfully wrongful taking possession of the money or goods of another with intent to deprive the owner of his property in them.

Man. Ch. VII. para. 56; Harris p. 190.

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NOVEMBER, 1903.

LIEUTENANTS.

FIRST PAPER (WITH BOOKS).

(*Time allowed—One hour.*)

Q. 1. Describe shortly the several stages in the investigation of the offence of a private soldier up to the assembly of a District Court-Martial for his trial.

A. 1. The charge will first be investigated by the Officer Commanding his Company, in order to have everything ready for the Commanding Officer's investigation. The accused is brought in under escort, without his cap; the charge is read out and the evidence against him heard; the Commanding Officer will then hear any defence he has to make or any witness he has to call. The evidence is not given on oath, unless the accused demands it, as he may do, if the Commanding Officer can deal with the case summarily. The Commanding Officer having remanded him for trial, a summary of evidence is taken later on. This is a statement in writing, in narrative form, of the evidence given at the investigation before the Commanding Officer, and is taken down in the presence of the accused, before an Officer. The evidence is not on oath; each witness signs his statement; and the accused can make any statement he wishes. An application for the District Court-Martial should usually be sent on within thirty-six hours of the man being remanded for trial. The Convening Officer will consider whether the evidence justifies a trial, and, if he decides to convene a Court, will issue

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the necessary order for its assembly. The Court should assemble within fifteen days at home, or thirty days abroad, of the receipt of the application. The accused must be warned for trial by an Officer not less than twenty-four hours before the trial commences.

s. 46 (6); R.P. 2, 3, 4, 5, 14, 17; K.R. 481, 484, 485.

Q. 2. State briefly the rules for the disposal of persons, not serving as soldiers, apprehended or surrendering as deserters.

A. 2. Any constable, Officer, soldier, or other person may apprehend anyone whom he reasonably suspects to be a deserter, and bring him forthwith before a Court of Summary Jurisdiction. If the Court is satisfied that such person is a deserter, it must deliver him into military custody, or remand him till he can be so delivered, and a "Descriptive Return" is forwarded to the proper military authority. If a deserter surrenders to a portion of his own Corps, and evidence of identification is available, or if a person dressed in uniform surrenders, and there is reason to believe his confession to be true, he may be taken into military custody. In no other case may a person be taken into military custody, except to be forthwith brought before a Court of Summary Jurisdiction as described above. **s. 154; K.R. 517.**

Q. 3. Describe the different ways in which a defect in a charge sheet may be amended.

A. 3. A mistake in the name or description of the accused may be amended by the Court at any time during the trial. Any other defect in the charge sheet can only be amended by the Convening Officer, before the Court have begun to take evidence.

R.P. 33.

Q. 4. Describe the procedure a Court-Martial should adopt where the accused raises an objection to the President of the Court.

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A. 4. An objection to the President will be disposed of before that against any member. The President will withdraw and take no part in deciding the objection. The accused states the grounds for his objection, and may call witnesses in support. The Prosecutor can call evidence to rebut that adduced by the accused. None of this evidence is given on oath. The Court then come to their decision in closed Court. If one-third of the members are in favour of the objection, it is allowed. If the Court disallows the objection, their decision is communicated to the accused, and the trial proceeds. If it is allowed, they will adjourn, and the senior member will report to the Convening Officer. If the Court is not reduced below the legal minimum, he may issue an order appointing the senior member President, or he may appoint a fresh President, or he may dissolve this Court and convene a fresh one.

s. 51; R.P. 25.

Q. 5. To what extent can an accused person who gives evidence himself refuse to answer questions put to him in cross-examination?

A. 5. He has the usual privileges of a witness as to not answering questions, except that he may be asked questions which tend to incriminate him as to the offence charged, but he must not be asked a question tending to show that he has been guilty of any other offence, unless—

(1) Proof that he had been convicted of this other offence would be admissible to show he is guilty of the present charge;

(2) He, or his counsel, has asked questions, or given evidence, to establish his good character, or the conduct of the defence has been to make imputations on the character of the Prosecutor or his witnesses;

(3) He has given evidence against any other person charged with the same offence

R.P., 80 (3).

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SECOND PAPER.

(*Time allowed—One hour*).

Q. 1. What penal stoppages may be made from the ordinary pay of a soldier?

A. 1. Pay is forfeited for every day

(*a.*) Of absence on desertion, or without leave.

(*b.*) Of absence as a prisoner of war.

(*c.*) Of imprisonment.

(*d.*) Of detention.

(*e.*) Of confinement:—

(1) On a charge of which he is afterwards convicted by Court-Martial or Civil Court, unless no entry of the civil conviction is made in the Regimental Conduct Book.

(2) On a charge of absence for which he is awarded detention by the Commanding Officer.

(3) In consequence of a confession of desertion or fraudulent enlistment, if the forfeiture is ordered by the competent military authority, when dispensing with his trial.

(*f.*) In hospital through sickness certified by the Medical Officer to have been caused by an offence against the Army Act.

Stoppages may also be ordered to make good any damage or loss caused by any offence, or to pay any fine, or to pay any sum ordered by the proper authority to be paid for the maintenance of his wife or children, or if he belonged to the Auxiliary Forces, any sum he is liable to, for quitting such forces.

s. 138; R.W. 902.

Q. 2. State fully the powers of a Commanding Officer in awarding detention to soldiers whose cases are dealt with summarily.

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A. 2. A Commanding Officer may award detention up to fourteen days, or, in the case of absence exceeding seven days, detention for each day of absence not exceeding twenty-one days. Except in cases of absence, detention exceeding seven days will not be awarded by any but Field Officers. A man undergoing detention may, for a fresh offence, be awarded a further sentence of detention, provided that he cannot be kept in detention for more than fourteen consecutive days, except for absence. Detention should never be awarded for simple drunkenness, unless the man is liable to trial or owes 20s. for unpaid fines.

s. 46 (2), (4), (5) ; K.R., 493 (i), 494 (v), 497.

Q. 3. What is meant by the "Summary of Evidence"? By whom and in what manner should it be prepared?

A. 3. When a soldier has been remanded to have the evidence reduced to writing, a summary of evidence is prepared. This is a statement taken down in writing, in a narrative form, of the evidence given by the witnesses at the investigation before the Commanding Officer. It is taken in the presence of the Commanding Officer or some officer deputed by him, and the accused, who can question the witnesses as to any variation in their evidence now and that given before the Commanding Officer. The accused may, if he wishes, make a statement, and give evidence himself, and may call witnesses in defence; but he cannot be compelled to say anything, or to sign his statement, and should be cautioned that anything he may say can be used in evidence against him. The witnesses sign their statements. The evidence is not taken on oath. The Officer, before whom the summary is taken, signs it and adds a certificate that the requirements of R.P. 4 have been complied with. **R.P. 4.**

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Q. 4. Enumerate the documents which should accompany the application of a Commanding Officer for the trial of a soldier by a superior Court. How are these documents disposed of when a Court-Martial is ordered?

A. 4. The application is made on A.F., B. 116, accompanied by the following documents:—

(1) The charge sheet in duplicate.
(2) The summary of evidence.
(3) The accused's squadron or company conduct sheet.
(4) List of witnesses for the prosecution and defence, with their present stations.
(5) Statement as to the character and service of the accused on A.F., B. 296.

These are disposed of in the following manner:—

One copy of the charge sheet is filed with the application for trial.

The other copy of the charge sheet and the summary of evidence are sent to the President.

The accused's Conduct Sheet, the list of witnesses, and the statement as to his character and service are sent back to his Corps.

Man., p. 604.

Q. 5. State fully the powers of a Commanding Officer in dealing with offences committed by non-commissioned officers?

A. 5. In dealing with non-commissioned officers, including acting non-commissioned officers, the Commanding Officer cannot award any summary or minor punishment, but they may be:—

(i.) Admonished.
(ii.) Reprimanded.
(iii.) Severely reprimanded.
(iv.) Ordered to revert to their permanent grade, if an acting or lance non-commissioned officer.
(v.) Removed from any appointment

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If the soldier's permanent rank is above that of Corporal, the sanction of an Officer not below the rank of Brigadier-General will be necessary. If a Non-Commissioned Officer, on removal from his appointment, is not qualified for the duties of his rank, the Commanding Officer, will apply to the War Office for his reduction to a lower rank.

s. 193 (2), (*c*); K.R., 302, 303, 493, 499.

Q. 6. Specify the circumstances in which an Officer is disqualified from serving on a Court-Martial?

A. 6. An Officer is disqualified from sitting at any particular trial if he is:—

(i.) The Prosecutor.
(ii.) A witness for the prosecution.
(iii.) The Convening Officer.
(iv.) The Confirming Officer.
(v.) The accused's Commanding Officer.
(vi.) The Officer who investigated the case.
(vii.) The accused's Squadron or Company Commander who made the preliminary inquiry into the case.
(viii.) The officer who took the summary of evidence.
(ix.) A Member of a Court of Inquiry which investigated the facts of the case.
(x.) Personally interested in the case.

ss. 50 (2), (3,) 54 (4); R.P., 19 (B).

Q 7. State the rules which should govern the "contents of a charge."

A. 7. A charge must disclose one offence only. Each charge is divided into two parts: (1) the statement of the *offence*, (2) the statement of the *particulars*. The statement of the *offence* must, unless it is a civil offence, be in the words of the Army Act, and if a civil offence in such words as will disclose the offence. The statement of the *particulars* need not be in any prescribed form of words, but must give such circumstances con-

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cerning the offence as will enable the accused to know what the particular crime, he is charged with, consists of. All the ingredients necessary to constitute the offence should be stated, and the place and date where it occurred must be given as accurately as possible. If the offence has caused any loss or damage for which it is desired that the Court should award stoppages, the particulars of this loss or damage must be stated. Any variance between the statement of the offence and the statement of the particulars is fatal. **R.P. 11.**

Q. 8. What courses may be taken by a Court-Martial which is re-assembled to revise its finding?

A. 8. The Court may respectfully adhere to their former finding; or they may revoke their former finding, and come to a fresh one; and if this new finding requires a sentence they must pass sentence afresh, even though in the words of the former sentence, as the revocation of the finding revokes the former sentence. **s. 54 (2); R.P, 52.**

Q. 9. Distinguish between the primary and secondary evidence of a document.

A. 9. Primary evidence of the contents of a document is the production of the document itself in Court; secondary evidence is a copy of the document; or the oral account of its contents, given by a witness who has read the original and can swear to its contents.

Man., Ch. VI., paras. 32, 36; Stephen, Arts. 64, 70.

Q. 10. Explain what is meant by:—

(*a*) Aggravated drunkenness.

(*b*) Serving in an exemplary manner.

A. 10. (*a*) *N.B.—The expression "aggravated drunkenness" has been repealed.* **A. Ann. Act 1907, s. 10 (i).**

(*b*) Serving in an exemplary manner means serving for three years without an entry in the Regimental Conduct Book. **K.R., 489.**

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MAY, 1904.

LIEUTENANTS.

(*Time allowed—Three hours.*)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. What are minor punishments? By whom and in what circumstances may they be awarded? (Omit all reference to board ship).

A. 1. Minor punishments are those prescribed by the regulations under s. 46 (9). These are confinement to barracks not exceeding fourteen days (in one award); and extra guards and picquets. They may be awarded by a Commanding Officer; and the Officer Commanding a Squadron or Company can award up to seven days' confinement to barracks, unless he has less than three years' service, in which case his Commanding Officer may limit his power to three days' C.B. Minor punishments are usually awarded for less serious offences not calling for a heavier punishment; or they may be combined with a summary punishment, not exceeding 168 hours' detention. Extra guards and picquets can only be awarded for irregularities when on, or parading for, these duties. No minor punishment can be awarded to a Non-Commissioned Officer. **s. 46 (9); K.R., 493, 494, 499, 500.**

Q. 2. "Except when it is important that the guilt or innocence of the accused should be definitely decided, it is undesirable to send a case before a Court-Martial when it appears doubtful whether the evidence will lead to a conviction."

Give two cases, one of a serjeant; one of a private, which you think should form exceptions, and your reasons.

A. 2. A serjeant is accused by a private soldier of ill-treating him; there is no evidence beyond that of the man; but the Commanding Officer desires

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to have the case tried by a Court-Martial in order that the character of the N.-C.O. may be decisively established.

A private soldier is charged with drunkenness on duty; the evidence is very conflicting, a fairly even number of credible witnesses appearing both for the prosecution and the defence. The Commanding Officer decides to send the case for trial in order that the man's guilt or innocence may be determined by a Court-Martial.

Q. 3. Show clearly and neatly, *in tabular form*, the punishments to which Non-Commissioned Officers are liable, and the authorities by whom they may be awarded.

A. 3.

Punishment.	By Whom Awarded.
Death	A General, or Field-General Court-Martial.
Penal Servitude ...	A General, or Field-General Court-Martial.
Imprisonment up to 2 years	A General, Field-General, or District Court-Martial.
Detention, up to 2 years	A General, Field-General, or District Court-Martial.
Detention up to 42 days	Any Court-Martial.
Field Punishment up to 3 months	Any Court-Martial (on active service).
Discharge with ignominy	A General, Field-General, or District Court-Martial.
Reduction	Any Court Martial; or the *Commander-in-Chief; or in India, the Commander-in-Chief, or any Officer appointed by him; or on active service the Officer Commanding-in-Chief or any General appointed by him.
Forfeiture of seniority of rank	Any Court-Martial.
Forfeitures	A General, Field-General, or District Court-Martial.
Forfeiture of ordinary pay not exceeding 3 months	Any Court Martial (on active service).
Fines	Any Court-Martial.
Stoppages	Any Court-Martial.
Removal from appointment	The Commanding Officer.

ss. 44, 47 (5), 48 (6), 49, 183; R.W., 1022, 1043, 1065, 1160.
Vide Note on page 10. K.R., 302.

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Q. 4. When may a private claim a Court-Martial?

A. 4. Before awarding a *summary* punishment, or if the award or finding will involve forfeiture of pay, the Commanding Officer must ask the man whether he wishes to be tried by District-Court-Martial instead of submitting to his award. If the Commanding Officer omits to ask this question, the man can claim his right to be tried at any time that day before the usual hour for the commitment of soldiers under sentence.

s. 46 (8); R.P., 7 (A).

Q. 5. Frame a charge against a pay-serjeant for deficiency of public moneys entrusted to him, where the circumstances negative the theory of mere negligence. Note distinctly the several points to be proved, and show how the burden of proof shifts.

A. 5. CHARGE SHEET.

The accused, No. 7001, Colour-Serjeant John Hall, 2nd Bn. Lancashire Fusiliers, a soldier of the regular forces is charged with—

s. 18 (4) Embezzling public money,

in that he

at Gibraltar, between the 4th and 30th June, 1904, applied to his own use the sum of fifteen pounds, fourteen shillings and eight pence, public money, which was entrusted to him in his capacity as pay-serjeant of B Company, 2nd Bn. Lancashire Fusiliers, by Captain Owen Thomas, the officer commanding the company.

Gibraltar, 13th July, 1904. L. J. DOUNCE, Lt.-Col., Commg. 2nd Bn. Lanc. Fus.

s. 18 (4); R.P., App. I.

It would be necessary to prove that the amount of money as stated in the charge was entrusted to the accused in his official capacity, and that it is now deficient; and that the accused has not accounted

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for it, and can give no satisfactory explanation of the deficiency. The burden of proof will at first rest with the Prosecution to prove the above facts; when they are established the burden of proving any facts which will explain the deficiency and thus negative the presumption of his guilt, will shift to the accused, as in the absence of any such evidence the Court will presume his guilt.

Man., Ch. VI., paras. 12, 13, Ch. VII., para. 59.

Q. 6. At a Court-Martial, to whom may the accused object, and for what causes? To whom may he not object, and why not?

A. 6. He can object to the President and any members of the Court, if he can show that they are ineligible or disqualified, or are prejudiced against him, or have expressed an opinion on the case adverse to him. **s. 51; R.P., 25** (A) and *note*.

He can object to the person proposed to be sworn as shorthand writer, or interpreter if he can show that such person is not impartial. **R.P. 72** (C).

He cannot object to the Prosecutor or the Judge Advocate; because neither of these officers are members of the Court. **R.P., 25** (B) and *note*.,

Q. 7. Define "desertion." Explain how a soldier on furlough can desert, and give an illustration.

A. 7. Desertion is absence without leave with the intention of permanently quitting the service, or of evading a particular important duty.

A man on furlough can desert, if he quits the place to which he had permission to go, under such circumstances as manifest an intention of not returning to his corps. Thus a man on furlough to Bedford, who was found on board a steamer at Liverpool, about to sail for America, dressed in plain clothes, and with a ticket for New York, could be convicted of desertion, unless he produced evidence to show that he was merely going for some special object, and intended to return.

Man. Ch. III. paras. 13, 17.

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Q. 8. What is the meaning of the expression: "Time is of the essence of the offence?" Illustrate by an example.

A. 8. This expression means that the time at which the offence took place forms an important ingredient in the charge and must be proved in evidence in order to support it. For example if a man is charged with burglary, it must be proved that the offence occurred between 9 p.m. and 6 a.m.; or if a sentry is charged with being asleep on his post, the hour at which he was thus found asleep must be proved. Again if the defence is to try to establish an *alibi*, time becomes all-important, and the hour of the alleged offence must be accurately proved.

R.P., App. I. (18), (22); Man., Ch. VII. para. 66, (*note.*)

Q. 9. What are Leading Questions? Who may and who may not ask them? Are there any exceptions to the broad rule? Give one or two examples.

A. 9. Leading questions are those which suggest the answer required. The rule is that these may not be put by the party calling the witness, because he must not put the evidence into his mouth; but they may always be put in cross-examination of the witness by the opposite party. The exceptions to the broad rule that such questions may not be put in the examination-in-chief are, when they are merely introductory, or when the witness is very young or deficient in mental understanding, or when he proves to be clearly hostile, *i.e.*, that. though called by a party, his sympathies are evidently with the other side. For example: "Were you in the Barrack-room on the night of the 10th inst.?" This though a leading question is only introductory and may be put. "Did you see the accused strike Corporal Jones with a mop?" This would be inadmissible.

Man., Ch. VI., paras. 107—112; Stephen, Arts, 128—132, Powell, p. 428.

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Q. 10. Private Smith is on his trial for breaking into the Serjeants' Mess at night, and stealing liquor. Serjeant Brown, called by the Prosecution, says:—"About 7 a.m. on the morning after the robbery, I met Private Smith, the accused, now before the Court, who belongs to my company, in the barrack square, and I stopped to give him an order about showing his kit which he never keeps clean, and he gave me a surly impudent sort of answer, and just then Corporal Jones came up, and he says: 'Serjeant, have you heard the mess has been robbed?' and I says 'No,' and he says 'Yes, it has; and there's a rumour that Smith here was seen hanging about there last night'; and with that, Smith, the prisoner, turns very white, and tried to mutter something, I couldn't catch what, and then moved off. And then next minute, Private Robinson runs up to where I and Corporal Jones was standing, and he says 'Serjeant, did Smith let out anything because we all think he was in it?'" Write out the portions of this statement that are admissible, with reasons; then the portions that are inadmissible, with reasons.

A. 10. The following parts of the above statement are admissible. "About 7 a.m. on the morning after the robbery I met Private Smith, the accused now before the Court, who belongs to my company." This explains how the witness and the accused were together when the remarks which follow were made, and how the witness is able to identify the accused. "Just then Corporal Jones came up and he says, 'Serjeant, have you heard the mess has been robbed?' and I says 'No,' and he says 'Yes it has; and there's a rumour that Smith here was seen hanging about there last night and with that Smith the accused turns very white, and tried to mutter something, I couldn't catch what, and then moved off." This is admissible, being a statement made in the presence of the accused. It is not evidence of the truth of the facts stated in the

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report, but to show the conduct and behaviour of the accused on hearing the statement made.

Man., Ch. VI.. para. 48; Stephen, Art. 8.

The following parts are inadmissible—

"I stopped to give him an order about showing his kit." This is irrelevant "Which he never keeps clean, and he gave me a surly impudent sort of answer." This is inadmissible as being irrelevant and only calculated to prejudice the Court against the accused. Evidence of bad character is not admissible.

Man., Ch. VI., paras. 17—19; Stephen, Art 56.

"And the next minute, Private Robinson runs up to where I and Corporal Jones was standing, and he says 'Serjeant did Smith let out anything, because we all think he was in it?'" This is mere hearsay and as such is inadmissible.

Man., Ch. VI., para. 46; Powell, p. 132.

Q. 11. Catalogue the various ways in which a soldier can be transferred from one regiment to another.

A. 11. Transfers may be divided into two classes, viz., those without the soldier's consent, and those with it. A soldier can only be transferred, without his consent, under the following circumstances:—

(1) When enlisted for general service he may, within three months of his attestation, be transferred to any other corps of the same arm of the Service.

(2) When he has been invalided from abroad, or when his corps is ordered abroad, and he is, on account of ill-health, unfit to go with it, or is within two years of the termination of his service.

(3) When he is serving abroad and his corps is ordered home, and he has more than two years to serve, unless he has extended his service.

(4) When he has been convicted of desertion or fraudulent enlistment, or his trial for these offences has been dispensed with; or

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when he has been sentenced by Court-Martial to not less than three months detention, he is liable to general service in commutation, wholly or partly, of any other punishment.

A soldier may at any time be transferred with his own consent. Among the most usual classes of voluntary transfer are—

(1) To the Royal Artillery, Royal Engineers, or Guards.
(2) Recruits irregularly enlisted for a corps for which they are not eligible.
(3) Recruits under three months' service wishing to go to another arm of the service.
(4) To enable a younger brother to serve with an elder one.
(5) To serve on the permanent staff of the Militia or Volunteers.
(6) To the Army Service Corps or other Departmental Corps.

s. 83; K.R., 333.

Q. 12. Write a short note on prisoners of war, their proper treatment, rights, and liabilities.

A. 12. Prisoners of war must be treated humanely, and only be subjected to the confinement necessary to prevent their escape. A prisoner cannot be punished for escaping if subsequently captured, but he may be shot to prevent his escape. Their arms and equipment may be taken from them but not their private property. They must be maintained by their captors, but in return for this maintenance can be compelled to work, except that they cannot be employed on any military work. They may be released on parole, but the captors are not bound to grant a parole, nor can the prisoners be forced to accept one. When released they are allowed to return to their own country, but cannot serve again in the same campaign against the same enemy. A prisoner who breaks his parole is liable to death if retaken.

L.W., paras. 28-44; Holls, pp. 145-148 Hall, secs. 131-133.

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NOVEMBER, 1904.

LIEUTENANTS.

(*Time allowed—Three Hours*).

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. Enumerate the punishments that can be awarded by the Officer Commanding a Squadron or Company. How far may Commanding Officers limit these powers?

A. 1. Officers Commanding Squadrons or Companies may award private soldiers minor punishment not exceeding seven days' confinement to barracks, extra guards and picquets, and the regulated fines for drunkenness, they may, as regards Non-Commissioned Officers not above the rank of Corporal, admonish, reprimand, but not severely reprimand, them.

In the case of Officers with less than three years' service the Commanding Officer may limit their powers to three days' confinement to barracks.

K.R., 484, 499, 501.

Q. 2. Under what circumstances has the accused the right to claim that the evidence brought against him before his Commanding Officer shall be given on oath?

A. 2. Whenever the Commanding Officer can deal summarily with the offence. **s. 46 (6).**

Q. 3. When are Non-Commissioned Officers and men of the Army Reserve subject to military law?

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A. 3. Non-commissioned Officers and men of the Reserve are subject when :—

(i.) Called out for training or exercise.
(ii.) Called out in aid of the Civil Power.
(iii.) Called out on permanent service.
(iv.) Employed in military service under the orders of an Officer of the Regular Forces.

s. 176 (5).

Q. 4. You are required to warn a soldier for trial by District Court-Martial. Explain how you would proceed.

A. 4. At any time not less than twenty-four hours before the trial I should see the man and give him a copy of the charge sheet, which I should read to him and if necessary explain. At the same time I should give him a copy of the summary of evidence. I should ask him if he wishes any witnesses summoned in defence (in addition to any whose names may be on the summary). If he is to be jointly tried I should inform him of the fact. **R.P., 14, 15.**

Q. 5. Give the sections and sub-sections of the Army Act under which the following offences would be tried :—

(*a*) A corporal in charge of a group of sentries on active service, without due authority, detains and questions the bearer of a flag of truce.
(*b*) Private A. parades with the defaulters at last post, and at 11.30 p.m. the same night is arrested in the town by the military police.
(*c*) Private B. is deficient of a medal; there is evidence to prove that he has pawned it.
(*d*) Private C. commits contempt of Court by creating a disturbance.
(*e*) Private D. having served two months in the Regular Forces, purchases his discharge. He again enlists, and on being asked, "Have you ever served in His Majesty's Army?" answers, "No."

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A. 5. (*a*) Under s. 40.
(*b*) Under s. 10 (4).
(*c*) Under s. 24 (3)
(*d*) Under s. 28 (5). Note that in this case the Court could have summarily ordered him to prison or into detention for not more than 21 days. **s. 28.**
(*e*) Under s. 33.

Q. 6. State briefly the duties of a prosecutor at a Court-Martial.

A. 6. The Prosecutor is an officer of justice, whose duty it is to assist the Court in determining the truth, not to obtain a conviction unfairly; he must bring out in evidence any facts that tend in favour of the accused as well as those against him. If the accused has elected to be tried, he so informs the Court immediately before the arraignment. It is also his duty to inform the Court if the accused will suffer any additional punishment consequential to the finding besides that awarded by the sentence of the Court. He can make an opening address; he examines the witnesses for the prosecution and cross-examines those for the defence; if the accused does not call witnesses in his defence, the prosecutor may address the Court a second time for the purpose of summing up; if the accused has called witnesses, he may reply to the case for the defence. He should not, except on active service, give evidence, unless to produce documents, or prove some formal matter. If it is necessary for him to give evidence he must be sworn and should be the first witness.
R.P., 39 (and *note*), **40, 41, 46** (E), **60.**

Q. 7. What do you understand by an "offer of violence?" Give an example.

A. 7. An offer of violence is any defiant act or gesture, which would if completed, result in violence; *e.g.*, throwing anything at a superior but missing him.
s. 8 (*note*).

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Q. 8. Distinguish between the two offences of "desertion" and "absence without leave."

A. 8. Desertion is absence without leave with the intention of permanently quitting the service or of evading a particular important duty. Absence without leave on the other hand is any absence when the intention just mentioned is wanting.

Man., Ch. III., para. 13.

Q. 9. A prisoner, on being escorted back to the guard room, after having been awarded detention by Colonel A. his Commanding Officer, says in the hearing of the men of the escort, but not of the non-commissioned officers, "I'll do for Colonel A. when I come out." Frame a complete charge sheet.

A. 9. Charge Sheet.

The accused, No. 7610, Private Thomas Hawkins, 2nd Bn. Middlesex Regiment, a soldier of the Regular forces is charged with

s. 40 Conduct to the prejudice of good order and military discipline

in that he

at Gibraltar, on the 10th October, 1904, after having been punished by Colonel Horatio Anson, Commanding 2nd Bn. Middlesex Regiment, said "I'll do for Colonel Anson when I come out" or words to that effect.

Gibraltar, H. ANSON, Col.,
11th Oct., 1904. Commg. 2nd Bn. Middx. Regt.

s. 8 (*note*). R.P., App. I.

Q. 10. In the examination-in-chief, at a Court-Martial, a witness must not, as a rule, be asked a leading question. What exceptions are there to this?

A. 10 The exceptions are, when the questions relate only to introductory matter and not to the substance of the issue; or when the witness is very young, or is clearly somewhat deficient in understanding, and requires help to get his evidence out of him properly; or lastly in the case of a hostile (or unwilling) witness. **Man., Ch. VI., paras. 106, 111.**

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MAY, 1905.

LIEUTENANTS.

(*Time allowed—Three hours.*)

Q. 1. You are on detachment, with powers of punishment restricted to those of an Officer Commanding a company. One of your men commits a serious offence that can only be adequately punished by a Commanding Officer or Court-Martial. How would you propose to deal with the case?

A. 1. If the case admitted of delay, I should refer the matter to superior authority. If an immediate example were required, I should act up to the full powers of a Commanding Officer, reporting my action to the superior authority who had restricted my powers. **K.R. 457.**

Q. 2. Apply the scale of fines to the disposal of the following cases:—

Pte. A.—Drunk on 10th March, 1905.
(Previous fines on 5th Dec., 1904, 20th Oct., 1904, 18th Aug., 1904, 1st Mar., 1904.)

Pte. B.—Drunk on 10th Mar., 1905.
(Previous fines on 15th Nov., 1904, 20th Aug., 1904, 20th Feb., 1904, 15th June, 1904).

A. 2. Pte. A. Fined 7/6.
Pte. B. Fined 7/6. **K.R. 477; A.O. $\frac{36}{07}$.**

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Q. 3. Pte. X is charged with being absent from 10 p.m., on the 10th March till 11 a.m. on the 11th March. As a Commanding Officer award the greatest minor punishment in your power. Describe in detail how you would enter the case in the proper record.

A. 3. 14 days' C.B.
This would be entered in the "Punishment" column of the Guard Report, while in the column of "Remarks" would be entered, "Forfeits 2 days' pay." **R.W. 902, 903; K.R. 485, 493** (iv.), **495.**

Q. 4. A recruit in the Yorkshire Regiment states to his Commanding Officer that he is a deserter from the Royal Artillery, Comment on the statement and describe the action which should be taken.

A 4. This confession, if true, amounts to a confession of fraudulent enlistment. The soldier should be asked to sign the form of confession given in K.R. 542. The Commanding Officer will cause A.F., B. 123 to be prepared and forward it to the Officer in charge of Records, who will complete it and return it. If this proves that the man was a deserter from the R.A., his Commanding Officer will submit an application for his trial for fraudulent enlistment in the usual manner. **s. 13; K.R. 521, 522.**

Q. 5. Why is theft from a comrade usually tried by a Military Court? Private A. is found in possession of a shirt belonging to Private B. of the same barrack room, but there is no evidence to prove that he stole it. How would you deal with the offence?

A. 5. Theft from a comrade has always been considered a particularly disgraceful offence, and is usually tried by Court-Martial, so as to render the accused liable to the consequential penalties which follow on a conviction of "Disgraceful Conduct," *e.g.*, loss of medals. **s. 18 (4); R.W. 1158.**

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If there is evidence to prove that the shirt was stolen, although not by A, he can perhaps be tried for "Receiving it knowing it to have been stolen." In most corps there is a standing order forbidding men to borrow other men's things; if such an order exists in this corps, Pte. A could be tried for "Neglecting to obey regimental orders."

ss. 11, 18 (4).

Q. 6. A soldier is charged before a Court-Martial with "Making away with his equipments, clothing, and regimental necessaries." Define "equipments," and point out the circumstances under which the value of the articles made away with would be inserted in the charge and the sentence.

A. 6. "Equipments" includes any article issued to a soldier for his use, or entrusted to his care for military purposes; in a charge like this, however, it would usually mean his accoutrements as distinct from his clothing and necessaries. Values are only put in the charge sheet against those articles which are Government property, for which it is desired that the Court shall award stoppages, as distinguished from articles which are accused's own property. In the sentence the accused is only put under stoppages to make good those articles to which values are stated.

s. 24; K.R. 563, 564.

Q. 7. By the Army Annual Act of 1904 the right of a soldier to elect trial by Court-Martial instead of submitting to the summary award of his Commanding Officer was extended. Point out the alteration made. How is the fact that a soldier has elected trial brought to the notice of the Court that tries him?

A. 7. The soldier's right of trial has been extended to include every case "where the award or finding involves forfeiture of pay," as well as cases when the Commanding Officer awards a summary punishment.

s. 46 (8).

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The Prosecutor informs the Court immediately before the accused is arraigned.

R.P., App. II., p. 563.

Q. 8. Who appoints the Prosecutor for a Court-Martial? The accused has power to give evidence himself in his own defence; to what extent may the Prosecutor comment on the fact?

A. 8. The Convening Officer is responsible that a proper person subject to Military Law is appointed Prosecutor. **R.P. 24; K.R. 573.**

If the accused gives evidence in his own defence, the Prosecutor can in his second address comment on the evidence so given; but he cannot make any comment on the fact of the accused having refused to avail himself of his right.

R.P. 40 (B) and *note.*

Q. 9. The form of proceedings of a Court-Martial deals with the case of a single accused. What difference in general procedure arises when (*a*) several accused persons are to be tried separately by the same Court, (*b*) when two or more accused persons are to be tried jointly on a charge such as mutiny?

A. 9. (*a*) When there are several cases to be tried separately, the Court can be sworn once for the trial of all the accused then present, each of whom must be given a separate right of challenge, and the Court will then proceed with the trial of each case separately. Separate Forms of Proceedings (A.F., A.9) will be kept for each trial. **R.P. 71.**

(*b*) When two or more accused persons are to be jointly tried, one Form of Proceedings only will be used; but each of the accused will have a separate right of challenge, and will plead and make his defence separately, and the finding and sentence of the Court will be separate for each of them. A separate record of all this will therefore be made in the Proceedings.

R.P. 71 (C) *note.*

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Q. 10. Under what circumstances can a Confirming Officer amend the wording of a sentence before confirming it? Give examples.

A. 10. When the sentence has been informally expressed or is in excess of that allowed by the law, the Confirming Officer can vary the form so as to express it properly, or to reduce the excess within legal limits, and can confirm the sentence so varied. For example—

If the sentence were "to be imprisoned for one year and six months" he could vary it so as to read "to be imprisoned for eighteen months," or if the Court sentenced a man already undergoing a sentence of imprisonment, of which he had suffered four months, "to be imprisoned for two years," he could vary it so as to read "to be imprisoned for twenty months."

s. 68 (2); R.P. 56 (A); K.R. 585.

Q. 11. Distinguish between forfeiture of service (towards discharge) and forfeiture of service for reckoning pension. What is meant by commutation to general service?"

A. 11. Forfeiture of service towards discharge is consequential on a conviction of desertion or fraudulent enlistment, or if ordered in the order dispensing with trial for either of these offences. It can never be awarded by sentence of a Court-Martial. Forfeiture of service towards pension (qualifying service) may be awarded by any Court-Martial except a Regimental Court-Martial, and in certain cases is consequential on the finding or sentence of the Court or the Commanding Officer, or on the man being discharged for misconduct.

ss. 44 (11) and *note*, 73, 79 (2); R.W, 1064, 1065.

When a man has been guilty of desertion or fraudulent enlistment, or has been sentenced by Court-Martial to not less than three months' imprisonment, he is liable in commutation of the whole or part of his punishment to be transferred for general service.

s. 83 (7).

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Q. 12. With the aid of examples, explain what is meant by
(*a*) Leading and irrelevant questions.
(*b*) Shifting the burden of proof.
(*c*) Hearsay is not evidence.

A. 12. (*a*) A leading question is one which suggests the answer required, and as a rule is not permissible in the examination-in-chief, as for example on a charge of "striking a superior officer," it would be a leading question if the Prosecutor asked a witness "Did you then see the accused strike Corporal A ?"

Man., Ch. VI., para. 107; Stephen, Art. 128.

An irrelevant question is one which does not tend to prove or disprove the charge; as for example on a charge of "striking a superior officer," it would be irrelevant for the Prosecutor to ask a witness if the accused was a bad tempered man.

Man., Ch. VI., paras 15—20; Stephen, Arts. 2, 3, 8.

(*b*) Shifting the burden of proof means that after the prosecution has made out a *prima facie* case against the accused, the burden of proving his innocence or any mitigating circumstances will shift to him; as for example on a charge of murder, after the prosecution has proved that the accused killed the deceased, the burden of proving any fact which will reduce the crime to manslaughter shifts to the accused.

Man., Ch. VI., paras. 13, 14; Stephen, Art. 95.

(*c*) Hearsay is the oral or written statement of a person who is not before the Court, conveyed to the Court either by a witness or the instrumentality of a document. As a rule "hearsay" is inadmissible. For example, it would be "hearsay" if on a charge of "Disobeying a lawful command" witness said, "The orderly corporal came and told me that the accused had refused to go for the rations when orderly man."

Man., Ch. VI., para. 46; Powell, p.

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NOVEMBER, 1905.

LIEUTENANTS.

(*Time Allowed—Three Hours.*)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. Define "Military Custody." State the regulations which prevent an accused person being unduly detained in custody pending (*a*) investigation and disposal of his offence by his Commanding Officer, (*b*) the convening of a Court-Martial for his trial.

A. 1. Military Custody means, in the case of an Officer, Warrant Officer, or Non-Commissioned Officer, usually arrest, but if necessary any of them may be placed under charge of a guard, etc.; in the case of a private soldier it means either placing him in open arrest, or putting him in confinement under charge of a guard, etc.

s. 45 (2); K.R., 465, 473.

(*a*). Any one committing a soldier into custody must give in, either at the time or within twenty-four hours, a "charge report" to the person in whose custody he is placed.

s. 45 (4).

The Commander of the Guard must enter the names of all persons in his custody in his Guard Report, which he must send in as soon as his guard is relieved or in any case within twenty-four hours of the prisoner being confined. If the "charge report" is not received within forty-eight hours, the officer to whom the Guard Report is rendered will usually order the release of the soldier. **K.R., 463.**

A Commanding Officer must investigate all charges within forty-eight hours of their being notified to him, or must report not having done so, with his reasons, to the General Officer Commanding. **R.P., 2.**

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If eight days elapse without the case being disposed of summarily or a Court-Martial being ordered, a special report must be made to the General Officer Commanding, and repeated every eight days, except on active service. **s. 45 (1); R.P., 1.**

(*b*). The time which should elapse between a man being remanded for trial and the issue of the order convening a Regimental Court-Martial or forwarding the application for a Superior Court, should not, under ordinary circumstances, exceed thirty-six hours. **R.P., 5 (B).**

If more than fifteen days in the United Kingdom, or thirty days elsewhere, elapse between the receipt of an application for a General Court-Martial or a District Court-Martial and the disposal of the case, either by the assembly of such Court or otherwise, the General Officer must report the circumstances to the Army Council, or, in India, to the Commander-in-Chief in India. **R.P., 17 (c).**

Q. 2. With the guidance of the notes given, award punishment as a Commanding Officer in the following cases :—

Name.	Offence.	Remarks.
Private A. ...	Absent from Tattoo, 10 p.m. 1st November to 7 a.m. 2nd November	Half the maximum *minor* punishment
Private B. ...	Absent from Tattoo, 10 p.m. 1st November to 5 a.m. 4th November	Maximum punishment
Private C. ...	Drunk in Barracks, 1st November	Last case 25th July. Four previous cases within past 12 months. Fine by scale.
Private D ...	Drunk on guard, 1st November	Half the maximum punishment.

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A. 2 Private A. 7 days' C.B. (Forfeits 1 day's pay.)
K.R., 493 (iv), 495; R.W., 902.

Private B. 168 hours' Detention and 7 days' C.B. (Forfeits 4 days' pay).
s. 46 (5), (9); K.R., 493—495 (A); R.W., 902.

Private C. Fined 7/6. **K.R., 512.**

Private D. Fine (if any). 168 hours' detention.
s. 46; K.R., 493, 497, 512.

Q. 3. Describe how a Commanding Officer would deal with the following cases: (*a*) a Serjeant holding an appointment commits an offence; (*b*) a Serjeant has been fined by the Civil Power for being drunk and disorderly in the streets.

A. 3. (*a*) He can remand him for trial or admonish, or reprimand him; and can, with the sanction of an Officer not below the rank of Brigadier-General, remove him from his appointment. If the man is not fit for the ordinary duties of a Serjeant, application can be made to the War Office for his reduction to a lower rank.
s. 183 (2), (*c*); K.R., 302, 303, 499.

(*b*) The Commanding Officer will report the conviction to an Officer not below the rank of Brigadier-General, who will decide whether it is desirable to recommend the reduction of the Serjeant by reporting it to superior authority for transmission to the War Office.

If the Court was a Court of Summary Jurisdiction and the fine has been paid, the Commanding Officer may, if he think fit, apply to an Officer not below the rank of Brigadier-General, not to make an entry in the man's Regimental Conduct Sheet.
s. 183 (2), (*c*); K.R. 506, 1916 (iii).

Q. 4. The following cases are brought up for investigation at the orderly room :—
Private A.—Making a false answer on attestation.
Private B.—Assaulting the Serjeant of the escort who had him in charge.

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Corporal C.—Permitting the escape of a prisoner.

Private D.—When on sentry, leaving his post.

Describe the circumstances under which a Commanding Officer could deal summarily with these offences, and point out the conditions which would render a trial by Court-Martial necessary.

A. 4. Private A.—If the false answer is with reference to his having enlisted while belonging to the Army Reserve, the case must be referred for trial; in any other case the Commanding Officer can deal with it. **s. 33; K.R., 487.**

Private B.—This amounts to an offence of striking his superior officer, which the Commanding Officer cannot deal with, and so must refer for trial.

s. 8 (1); K.R., 487.

Corporal C.—If the offence was wilful, it must be referred for trial; if the escape was due to the Corporal's negligence the Commanding Officer can dispose of the case. **s. 20; K.R., 487.**

Private D.—If the offence took place on active service, it must be referred for trial; if not on active service, the Commanding Officer can deal with it.

s. 6 (1) (*k*); K.R., 487.

Q. 5. Certain irregularities are reported to have taken place during the South African War. In the event of charges under military law being made against any persons concerned, what is the law as to the limit of time within which charges must be preferred? State any exceptions to the general rule.

A. 5. No trial can take place under military law unless the offence took place within three years from the date the trial commences, unless the offence was mutiny, desertion, or fraudulent enlistment;

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and if the man has served in an exemplary manner, *i.e.*, without an entry in his regimental conduct sheet for three years since he committed the offence, he cannot now be tried for desertion not on active service, or for fraudulent enlistment.
s. 161; K.R., 489.

Q. 6. A General Court-Martial is assembled at Aldershot for the trial of Major X., Bristol Regiment.

President:

Major-General A., Commanding 4th Division.

Members:

Colonel B., Commanding Salisbury Regiment.
Lieut.-Colonel C., Commanding Bristol Regiment.
Lieut.-Colonel D., Royal Artillery.
Major E., Guildford Regiment.
Major G., Royal Engineers.
Captain H., Reading Regiment.
Lieutenant K., Guildford Regiment.
Waiting Member:—Major L., Bristol Regiment.
Judge Advocate:—Colonel Z.

Comment on the composition of the above Court, pointing out in what respects it is illegal, and in what respects it might be altered with advantage.

A. 6. The composition is illegal in the following respects:

(i.) There are only eight members, whereas nine is the legal minimum at home. s. 48 (3).

(ii.) The accused's Commanding Officer is disqualified from sitting on his trial. s. 50 (3).

(iii.) Lieutenant K. cannot sit on a Court for the trial of a Field Officer. s. 48 (7).

(iv.) If the waiting member, Major L., of the accused's Regiment is junior to him, he will be disqualified as having a personal interest in the case, as the conviction and cashiering of Major X. would give him a step of promotion. s. 50 (3).

It would be better to put on another officer of superior rank in place of Captain H., as in the case

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of the trial of an Officer all the members should be of equal or superior rank to the accused, unless the Convening Officer certifies in the order convening Court that none is available. **R.P., 21** (B).

Q. 7. Explain with the aid of an example what is meant by *alternative charges*. To what extent may the defects in a charge-sheet be amended after the examination of witnesses has commenced?

A. 7. When it is doubtful whether the facts proved by the evidence are more correctly described by one word or expression than another, alternative charges may be framed, each charge containing one of the expressions which appear applicable to the facts capable of being proved.

e.g. 1st charge—Stealing goods, the property of a comrade.

2nd charge—Receiving, knowing them to have been stolen, goods, the property of a comrade. **R.P., App. I. (6).**

After the examination of witnesses has commenced, the only amendment which can be made in a charge-sheet is any mistakes in the name or description of the accused, which can be made by the Court at any time during the trial. **R.P., 33.**

Q. 8. Describe the course to be pursued by a Court-Martial when the Court is re-assembled by the Confirming Authority for revision of its finding. In the event of one of the members of the Court being unable to attend on re-assembly, what action would be taken?

A. 8. The Court having re-assembled and considered the remarks of the Confirming Officer, may either adhere to their former finding, or may revoke it and come to a new finding. If this new finding requires a sentence, they must past sentence afresh, as by revoking the finding the sentence is *ipso facto* revoked also. **s. 54 (2); R.P., 52** (B).

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The President, or if the absent member is the President, the senior member, would report the matter to the Confirming Officer. If the Court is reduced below the legal minimum there can be no revision. If not so reduced they can revise; if the absent member is the President, the Confirming Officer must appoint the senior member, if of sufficient rank, President, otherwise there can be no revision. **R.P., 52 (A)** and *notes.*

Q. 9. Quote the authority for the following statements: —

(*a*) A member of a Court-Martial cannot confirm its proceedings.

(*b*) A Prosecutor may comment on the fact that the prisoner gives his evidence after hearing the evidence of his own witnesses.

(*c*) A Serjeant should not be tried by a Regimental Court-Martial.

(*d*) On a trial for a military offence, the deposition of an absent witness is not admissible.

A. 9. (*a*) S. 54 (4).

(*b*) R.P., 41 (B) *note.*

(*c*) K.R., 438.

(*d*) There appears to be no authority for this statement. Depositions are not provided for in military legal procedure, but in ordinary criminal procedure a deposition taken before a magistrate in accordance with the provisions of 11 and 12 Vict., c. 42, s. 17, may under certain circumstances be used at the subsequent trial. It is not likely that such a deposition would ever come before a Court-Martial, for the case being already taken up by the Civil Power could not afterwards be dealt with under Military Law. It looks as though the question were confusing a "*deposition*" as above described with the *summary of evidence.*

s. 162 (6); Man., Ch. VI., para 57; Stephen, Art. 140.

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Q. 10. Give a brief explanatory answer to the following questions :—

(*a*) Can the Prosecutor remain present when the Court is cleared ?

(*b*) Can the proceedings of a General Court-Martial be continued in the absence of a Judge-Advocate ?

(*c*) Can a witness in cross-examination be asked if he had been previously convicted of felony at a certain date ?

(*d*) Can the Prosecutor during a trial produce evidence as to the character of the accused ?

A. 10. (*a*) No; when the Court is closed no one can be present except the members, the Judge-Advocate, and any officers under instruction ; all of whom take an oath of secrecy.

s. 52 (1), (2) ; R.P., 27, 63 (A).

(*b*) No. But if the Judge-Advocate is unable from any cause to attend, the Convening Authority —or at home the Judge Advocate-General— may appoint another fit person as Judge-Advocate for the remainder of the trial.

R.P., 102.

(*c*) If the fact of such conviction would merely discredit the witness without impeaching his credibility, he cannot be compelled to answer it, but if it would shake his credit then the Court will require him to answer.

R.P. 92 (B) ; Man., Ch. VI., para. 114.

(*d*) The Prosecutor cannot produce evidence of the accused's bad character prior to conviction. After conviction he produces a statement of his previous character, to guide the Court in awarding punishment.

R.P., 46 (A) ; Man., Ch. VI., para. 17.

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MAY, 1906.

LIEUTENANTS.

(Time allowed—Three hours).

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. Distinguish between the Army Act and the Army Annual Act, and give a brief summary of the object and usual contents of the latter.

A. 1. The Army Act embraces the contents of the old Military Acts and former Enlistments Acts, and contains the greater part of the Military Code under which the Army is governed. It was passed in 1881, but in order, however, to keep up the constitutional principle of Parliamentary Sanction to the maintenance of a Standing Army it only remains in force for such period as may be determined in the Annual Act. The Army Annual Act is a short Act passed in the spring of every year with the object of continuing the Army Act in force for a further twelve months. It commences with a preamble rehearsing the necessity for a Standing Army and fixing their number, and the necessity for trying and punishing offences against military law by a special code. S. 1 gives the short title of the Act; s. 2 continues the Army Act for a year; s. 3 fixes the prices for billets during the year; and other sections are added when any amendments are made in the Army Act.

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Q. 2. At the investigation of a charge by a Commanding Officer sufficient evidence is not forthcoming, and there is no opportunity of continuing the investigation. What course should be pursued?

A. 2. If the charge is for a serious offence, the accused may be released and ordered to do duty, without prejudice to his subsequent re-arrest should further evidence afterwards be forthcoming. If the charge is for a trivial offence it should be dismissed. **K.R., 490.**

Q. 3. It is proposed to try a private soldier by District Court-Martial, on evidence which shows that he pawned a watch lent to him by a comrade. Under what section of the Army Act would it be advisable to frame a charge, and why?

A. 3. He should be charged under s. 18 (4) with "stealing goods, the property of a comrade." This is a case of theft by a *bailee*, for he is the *bailee* of the watch lent him by his comrade.
Man., Ch. VII, para. 56, and *note* (*c*).

Q. 4. Can a District Court-Martial sentence a Warrant Officer, not holding an honorary commission, to any of the following punishments:—
(*a*) Suspension from rank, pay and allowance?
(*b*) Reduction to a lower grade?
(*c*) Reduction to the ranks?

A. 4. (*a*) No.
(*b*) Yes.
(*c*) Yes, if he was originally enlisted as a soldier?
s. 182 (2).

Q. 5. An Army Reserve man, not called out, behaves in an insubordinate manner to an officer, who is acting in the execution of his office under the Reserve Forces Act. Is he liable to punishment? If so, explain.

A. 5. He is liable to be tried by Court-Martial and to suffer imprisonment; or by a Court of Summary Jurisdiction, and to be fined not less than 40/- or

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more than £25, or in default imprisonment as allowed by law. He cannot be tried by both Courts for the same offence; and is not to be tried by Civil Court without the written sanction of an officer having power to direct his trial by Court-Martial. **R.F. Act, ss. 6, 26,** and *note.*

Q. 6. Discuss shortly the distinction between the *competency* and the *credibility* of witnesses before a Court-Martial.

A. 6. The *competency* of a witness means whether he or she is by law admissible to give evidence at all in the case before the Court, whereas the *credibility* of a witness means the weight that is to be given to his or her evidence on account of its veracity or otherwise. As a rule all persons are competent, the chief exceptions being any young persons or those wanting in mental understanding. A Member of a Court-Martial is incompetent to give evidence for the prosecution, but can do so for the defence. The accused and his wife are now competent to give evidence for the defence, but only at the request of the accused. Credibility will depend on the personal character of the witness for truthfulness, bias due to interest or prejudice, opportunity of accurately knowing the facts testified to, and many other circumstances which must be considered by the Court when weighing the evidence.

Man., Ch. VI., paras. 82, 83, 86-91; Stephen, Arts. 106, 107.

Q. 7. After the discharge of three soldiers of the Regular Forces, A, B and C, on 1st April, 1906, evidence was forthcoming that—

A. Committed an offence against section 18 of the Army Act on the 1st August, 1904.

B. Deserted on the 3rd January, 1902.

C. Fraudulently enlisted on the 2nd April, 1904.

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Are these men liable for trial and punishment? If so, explain.

A. 7. A. As the offence took place within three years he is liable for trial, provided the trial commences within three months of his discharge.

B. If the desertion took place on active service, he will be liable at any time; if not on active service, he will still be liable to trial at any time, unless he has since served for three years in an exemplary manner, *i.e.*, without an entry in his regimental conduct sheet, in which case he cannot be tried, as the offence took place more than three years ago.

C. Can be tried at any time, as he cannot have served for three years in an exemplary manner since his offence. **ss. 158, 161; K.R., 489.**

Q. 8. Two soldiers are absent from tattoo at 10 p.m. on the 20th January. One returned at 3.40 a.m., the other at 10.15 a.m. on the following morning. What forfeiture of pay is entailed in each case?

A. 8. The first man will forfeit no pay unless he has missed a duty, which was thrown on another man, in which case he will forfeit one day's pay.

The second man will in any case forfeit 2 days' pay. **ss. 138 (1), 140 (2); R.W., 902, 903.**

Q. 9. Comment on the following charge against a soldier:—
Using threatening language to his superior officer, in that he at on said to Corporal A, "I'll do for that Serjeant B."

A. 9. This is a perfectly good charge under s. 8 (2). It has been the rule that insubordinate language used *to* one superior about another with the *intention* that it should be heard by the person comes within the section. **s. 8 (2) and *note*.**

Q. 10. Private A. is charged before his Commanding Officer with absence without leave for 5 days and a minor

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offence, and Private B. with causing a disturbance in the canteen. The Commanding Officer decides to award 8 days' C.B in each case. Must he ask either or both the prisoners whether they desire to be dealt with by District Court-Martial?

A. 10. He must ask Private A., as his absence entails a forfeiture of pay. He need not ask Private B.
s. 46 (8).

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NOVEMBER, 1906.

LIEUTENANTS.

(Time allowed—Three hours.)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. Mention the principal amendments made in the Army Act by the Army (Annual) Act of 1906.

A. 1. The introduction of the punishment of detention instead of imprisonment for purely military offences, and the corresponding curtailment of the power of Regimental Courts-Martial or Commanding Officers to award imprisonment; the power to award forfeiture of seniority of rank to Non-Commissioned Officers; the abolition of flogging in military prisons; the extension of military law to reservists employed in military service; the extension of the offence of fraudulent enlistment to include Indian and Colonial Forces.

A. Ann. Act, 1906.

Q. 2. The following cases of drunkenness and absence are recorded against a soldier. To what fine is he liable on each occasion?

(1) 7th December, 1901.
(2) 13th January, 1902.
(3) 9th March, 1902.
(4) 18th July, 1902.
(5) 3rd December, 1902.
(6) 23rd December, 1902, to 28th February, 1903, absent and in detention barracks (not drunk).

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(7) 8th March, 1903.
(8) 12th June, 1903.
(9) 8th July, 1903.

A. 2. (1) No fine.
(2) 2/6.
(3) 10/-.
(4) 7/6.
(5) 7/6.
(7) 10/-.
(8) 7/6.
(9) 10/-. **K.R. 512.**

Q. 3. What offence is committed by—
(*a*) A yeoman called out for actual military service, who enlists into the—— Hussars?
(*b*) A sailor of the Royal Navy who enlists into the Royal Berkshire Regiment?
(*c*) A soldier of the Regular Forces who has given a false age on attestation?
(*d*) An Army Reservist who enlists into the Guards?
(*e*) A Militiaman whilst up for training who enlists into the Essex Regiment?
(*f*) A private of the Army Service Corps who enlists into the Royal Navy?

A. 3. (*a*) Fraudulent enlistment. **s. 13.**
(*b*) False answer on attestation. **s. 33.**
(*c*) False answer on attestation. But as a rule a man should not be tried for this. **s. 33** and *note.*
(*d*) False answer on attestation. **s. 33.**
(*e*) False answer on attestation. **s. 33.**
(*f*) Fraudulent enlistment. **s. 13.**

Q. 4. At a District Court-Martial the accused elects to give evidence. Can he be asked questions tending to show that he is of bad character?

A. 4. He may be asked any question tending to incriminate him as to the offence with which he is charged, but he cannot be asked any question tending to show that he has committed any other offence, unless—

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(1) Proof that he has committed this other offence is admissible to prove his guilt of the present charge;

(2) He has asked questions of the witnesses for the prosecution to prove his own good character, or has given evidence to this effect, or the conduct of the defence has been such as to involve imputations on the character of the prosecutor or his witnesses.

(3) He has given evidence against any other person charged with the same offence.

R.P., 80 (3); Man., Ch. VI., para. 931.

Q. 5. What points should be made clear to the accused by the president of a Court-Martial on the former pleading guilty to a charge?

A. 5. That the accused understands the nature of the charge and what he is admitting by his plea of *guilty*, and also that he understands the difference in the procedure which will be followed on such a plea. **R.P., 35.**

Q. 6. Regimental Courts-Martial are now much less frequently assembled than formerly. Why is this? Under what circumstances would they be assembled at the present day?

A. 6. Owing to the power of a Commanding Officer having been increased up to awards of 14 days' detention. Only when the offence is not very serious, but the accused, being a Non-Commissioned Officer, cannot be punished by his Commanding Officer, or owing to his bad character deserves a severer punishment than the Commanding Officer can award.

Man., Ch. V., para. 15.

Q. 7. A soldier in arrest, on being warned for trial by District Court-Martial, gives the name of a civilian whom he desires to call in his defence. What steps should be taken, and by whom, to ensure the attendance of the witness? Can the latter be punished for non-attendance?

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A. 7. The soldier's Commanding Officer should sign a summons for the witness to attend, and should get it served on him (or her) by the Police.

R.P., 78 (B.), App. II., p. 580.

If the expenses of the witness have been paid or tendered, he can be punished for non-attendance by a Civil Court, to whom his offence should be reported by the President. **s. 126 (1).**

Q. 8. Write out "a statement of the offence" in the case of a soldier found in a public-house placed "out of bounds" by a garrison order.

A. 8. When in garrison, being found in a place prohibited by garrison orders, without a pass or written leave from his Commanding Officer. **s. 15 (3).**

Q. 9. Serjeant D. is to be tried by Court-Martial for leaving his guard without orders; Private E. for making a false statement to his Commanding Officer that he had deserted from another regiment; Private F. for procuring a suit of plain clothes for a man of his company, knowing that the latter was about to desert; Colour-Serjeant G. for forging the name of the Captain of his company to a cheque.

Under what sections of the Army Act would these soldiers respectively be charged?

A. 9.

Serjeant D.	**s. 6 (1 B).**
Private E.	**s 27 (3).**
Private F.	**s. 14 (1).**
Colour-Serjeant G.	**s. 41.**

Q. 10. What is the law as to the use that may be made at a Court-Martial of a confession obtained under a promise of secrecy?

A. 10. If the confession is otherwise admissible it is not inadmissible merely because it was made under a promise of secrecy, though it would be improper to try to induce a confession under such conditions.

Man., Ch. VI., para. 79.

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MAY, 1907.

LIEUTENANTS.

(Time allowed—Three hours.)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. A Lance-Serjeant is brought before his Commanding Officer charged with drunkenness. In what different ways may the Commanding Officer deal with the case?

A. 1. He can dismiss the case.

He can admonish, reprimand, or severely reprimand the man.

He can deprive him of lance rank.

He can try him by Regimental Court-Martial.

He can apply for a District Court-Martial for his trial. **K.R., 487, 488, 473, (vi.), (vii), 499.**

Q. 2. To what number of days' forfeiture of pay are the following liable for absence without leave?

Private T. absent from 10 p.m., 22nd May, until 5 p.m., 23rd May.

Private U. absent from picquet mounting at 4.30 p.m., 23rd February, until 6 p.m., 23rd February.

Private V. absent off pass from 6.30 a.m., 22nd May, till 10 p.m. same date.

Private W. absent from parade at 10 30 a.m., 22nd May, until 1 a.m., 23rd May.

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A. 2. Private T., 2 day's pay.
Private U., 1 day's pay, if another man were entailed for picquet in his place, otherwise no forfeiture.
Private V., 1 day's pay.
Private W., 2 days' pay.
ss. 138 (1), 140 (2); R.W., 902, 903.

Q. 3. A soldier in arrest, when before his Commanding Officer, claims—

(*a*) That the evidence against him shall be taken on oath.

(*b*) That he shall be remanded for trial by District Court-Martial instead of submitting to a summary award.

In what circumstances should their claims be allowed?

A. 3. (*a*) The accused can always claim to hear the evidence taken on oath in any case which the Commanding Officer can deal with summarily. **s. 46 (6).**

(*b*) If the award or finding of the Commanding Officer involves forfeiture of pay, or if he awards any punishment other than a minor punishment, he must first give the accused the option of being tried by a District Court-Martial.
s. 46 (8).

Q. 4. Distinguish between the offences of "sedition," "mutiny," and "insubordination." How far would "provocation" affect the punishment awarded for the two last-named offences?

A. 4. *Sedition* is the same offence as that in the ordinary criminal law, and consists of any conduct calculated to bring into contempt, or exciting disaffection against, the Sovereign, or the Government, or either House of Parliament, or the administration of justice.

Mutiny is collective insubordination, or the combination of two or more persons to resist lawful military authority: The essence of the offence is the combination to resist authority.

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Insubordination is individual resistance to military authority; any act, language, or disobedience in defiance of authority is insubordination.

Man., Ch. III., paras. 4, 6.

Provocation, though not a ground for acquittal, is to be considered in determining the sentence, and would tend to mitigate the punishment awarded.

s. 8 (*notes*); **K.R., 583** (i.)

Q. 5. An accused is being tried for—

1st charge—Making away with by selling his clothes and regimental necessaries.

2nd charge—Losing by neglect his clothing and regimental necessaries

He pleads "not guilty" to the first and "guilty" to the second charge.

Explain the subsequent proceedings.

A. 5. If from the summary of evidence there was ground for believing he had pleaded "guilty" to the less serious charge in order to avoid the consequences of a conviction on the more serious one, the Court would proceed with the trial as though he had pleaded "not guilty" to both the charges, and would find him guilty of whichever of the two the evidence proved. Otherwise the Court would proceed with the charge to which he had pleaded "guilty," and find him formally "not guilty" of the other.

R.P., 37 (A).

Q. 6. At a Court-Martial how would objections by the accused to the following be dealt with?

(1) The Members of the Court collectively.
(2) The President.
(3) The Judge Advocate.
(4) The Prosecutor.
(5) An Interpreter.

A. 6. (1) He cannot object to the Court collectively, but must state his objection to each individual member. These objections would be dealt with in turn by the other members, commencing with the objection to the junior member objected to.

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After stating the grounds of his objection, the accused can call witnesses in support. The Court will then decide whether the objection is valid or not. The objection is allowed if one half are in favour of it.

s. 51 ; R.P., 25 (and *notes*).

(2) An objection to the President is dealt with by the other members before that against any member. The procedure is the same, except that the objection is allowed if one-third of the members are in favour of it. **s. 51 ; R.P., 25.**

(3) He cannot object to the Judge Advocate.

R.P., 25 (B.).

(4) He cannot object to the Prosecutor.

R.P., 25 (B.).

(5) He can object on the ground that the proposed Interpreter is not impartial, and the Court would enquire into the objection, and if they think it is reasonable, will not swear the person proposed. **R.P., 72** (C.).

Q. 7. Explain in what manner the nature or composition of Courts-Martial would be affected if assembled for the trial respectively of—

(1) A Field Officer.
(2) An accredited War Correspondent.
(3) A Warrant Officer.
(4) A Private of Volunteers.

A. 7. (1) A Field Officer cannot be tried by any Court but a General, or Field-General Court-Martial. No officer of inferior rank should be on the Court, and in no case can an officer under the rank of Captain serve on it.

ss. 47 (5), 48 (6), (7), 49 ; R.P., 21 (B).

(2) A War Correspondent cannot be tried by any Court inferior to a District Court-Martial, or if granted a pass entitling him to the status of an officer, only by a General or Field-General Court-Martial.

ss. 47 (5), 48 (6), 49, 175 (8), 184 (1).

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(3) A Warrant Officer cannot be tried by any Court inferior to a District Court-Martial; or if holding an honorary commission, only by a General or Field-General Court-Martial. The President of a District Court-Martial cannot be below the rank of Captain.

ss. 47 (5), 48 (6), 49, 182 (1), (4), 190 (4).

(4) *N.B.—The Volunteers are now extinct, and have been succeeded by the Territorial Force.*

A private in this force could, when subject to military law, be tried by any description of Court-Martial, but one member at least should be an officer of the Territorial Force, unless the Convening Officer certifies this is impracticable. **R.P.. 20 (B.).**

Q. 8. What course is open to a Court-Martial in each of the following circumstances?

(*a*) Immediately after the accused's plea of "not guilty" has been recorded, a mistake in a material date in the charge sheet is discovered.

(*b*) When about to sentence the accused, it is found that one figure in his regimental number is incorrectly given in the charge sheet.

A. 8. (*a*) The Court should adjourn and report the matter to the Convening Officer, who may either amend the charge sheet or order a new trial.

(*b*) The Court can themselves amend this error.

R.P., 33.

[*Two* ONLY *of the following four questions are to be answered.*]

Q. 9. In reviewing the proceedings of a District Court-Martial, the Confirming Officer considers that a plea offered to the jurisdiction by the accused, which has been overruled by the Court, is valid.

How should the Confirming Officer act, and what would be the results of such action?

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A. 9. He should refuse confirmation. The consequence of this would be that the trial would be invalid, and the accused could be tried again.
ss. 54 (6) (and *notes*) ; **157** (and *note*).

Q. 10. Give an illustration, in each instance, of what you consider the meaning of—
(1) "Forcing a safeguard."
(2) "Attempting to desert."
(3) "An offer of violence."
(4) "In the execution of his office."
(5) "Malingering."

A. 10. (1) A sentry is posted at the door of a convent in an occupied town on active service, with orders to prevent any one entering. A soldier in defiance of the sentry's attempt to stop him, dodges past him and enters. This is forcing a safeguard. **s. 6 (1 c.)** and *note*.

(2) A Colour-Serjeant under arrest for embezzlement is apprehended, dressed in plain clothes, by the Garrison Military Police, in the act of embarking on a foreign-bound steamer. This is an attempt to desert.
s. 12 (*notes*); **Man., Ch. III., para. 18.**

(3) A private throws a boot at a corporal, who has just ordered him to be confined, but misses him. This is an offer of violence. **s. 8 (1)** *note*.

(4) A Serjeant walking out in the evening sees one of the men of his regiment improperly dressed, and orders him back to barracks. He is in the execution of his office. **s. 8 (1)** *note*.

(5) A soldier shortly before being medically inspected takes a drug to induce palpitation, with a view to being put on the sick list for heart disease. This is malingering. **s. 18 (1)** *note*.

Q. 11. Private X. deserts and while still in a state of desertion, fraudulently enlists.
Private Y., who has a previous conviction recorded against him for fraudulent enlistment, deserts.

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Private Z. deserts when under orders for active service.

Explain fully how far the circumstances mentioned affect the punishment to which each offender is liable.

A. 11. Private X can only be sentenced as for a first offence of fraudulent enlistment, as the desertion immediately preceding his offence makes no difference. **s. 13 (3).**

Private Y. can be sentenced to penal servitude (if the Court is a General Court-Martial) as the previous conviction of fraudulent enlistment is equivalent to a previous conviction of desertion. **s. 12 (1), (3).**

Private Z. is liable to be sentenced to death, as he committed the offence when under orders for active service. **s. 12 (1).**

Q. 12. During the examination of witnesses at a Court-Martial—

(*a*) An Officer of the Experimental Staff is asked his opinion as to the effect of a certain explosive.

(*b*) An Officer is asked to give his opinion as to whether certain facts, to which he has given evidence, are in accordance with military usage.

(*c*) A witness states that he believes the handwriting in a document produced to be that of the accused.

Are any, or all of these opinions admissible as evidence? Give reasons for your answers.

A. 12. (*a*) As a rule the opinion of a witness is not evidence unless he is an expert. In the case of a military witness before a Court-Martial, if the matter on which he expresses an opinion is something outside that which the members would know themselves from their knowledge of the Service, the evidence would be admissible. That would be the case here.

Man., Ch. VI., paras. 63, 64, 66.

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(*b*) If these facts relate to matters of ordinary military usage, the opinion of the witness would not be admissible; if, however, they related to matters beyond the cognizance of the officers forming the Court, it would, as the opinion of an expert, be admissible.

Man., Ch. VI., paras. 63, 64, 65.

(*c*) The belief of the witness as to the identity of the handwriting is admissible. The value of his opinion will depend on his skill as expert, or the opportunity he has had for becoming acquainted with the handwriting of the accused.

Man., Ch. VI., paras. 64, 67, 68.

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NOVEMBER, 1907.

LIEUTENANTS.

(*Time allowed—One hour.*)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. Private A. enlists in January, 1907, and the following cases of drunkenness are recorded against him in his first year's service:—

1st February.
20th February.
21st May.
25th August.
28th November.

On the 30th June he is awarded 7 days' detention for absence. On the 15th October he is awarded 10 days' C.B. State the fines which should be awarded in each case. Would the soldier be liable by King's Regulations or Army Act to trial by Court-Martial for any of these cases?

A. 1. 1st February: No fine.
20th February: Fined 2s. 6d.
21st May: Fined 7s. 6d.
25th August: Fined 10s.
28th November: Fined 7s. 6d.

He is only liable under the Army Act or King's Regulations to trial for the last offence, unless any of the others were cases of other than simple drunkenness, in which case he could be tried for such case. **ss. 19, 46 (3); K.R., 509, 512.**

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Q. 2. What is the meaning of—

(*a*) A lawful command?

(*b*) Fraudulent enlistment?

(*c*) Discharge with disgrace?

(*d*) Arraignment?

(*e*) A protecting certificate?

When may this latter be issued?

A. 2. (*a*) A lawful command is one that is not only not contrary to civil law, but is also justified by military law. **Man., Ch. III., para. 10.**

(*b*) Fraudulent enlistment is the offence committed by a soldier of the Regular Forces, or a man of the Militia or Territorial Force, when embodied, or a Yeoman called out for actual military service, who, without fulfilling the conditions enabling him to do so, enlists or enrols into any part of His Majesty's forces or any force raised in India or a Colony. **s. 13.**

(*c*) Discharge with disgrace means discharge—

(1) With ignominy.

(2) As incorrigible and worthless.

(3) For misconduct.

(4) On conviction of felony.

(5) On a sentence of penal servitude.

s. 32 (2).

(*d*) The arraignment of the accused means reading to him each charge in a charge sheet and his pleading thereto separately. **R.P., 31.**

(*e*) A protecting certificate is issued to a man who has been committed as a deserter by a civil court, who is not required to serve. It is issued when the man is not claimed for service. **K.R., 518, 519.**

Q. 3. Distinguish between an officer who is not eligible, and one who is disqualified from sitting on a Court-Martial.

A. 3. An officer is not *eligible* to serve on a Court-Martial unless he is subject to military law and has the

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service required for the particular description of court. An officer is *disqualified* from sitting on the trial of any particular case who is—

(i.) The prosecutor.
(ii.) A witness for the prosecution.
(iii.) The Convening Officer.
(iv.) The Confirming Officer.
(v.) The accused's Commanding Officer.
(vi.) The officer who investigated the case.
(vii.) The officer who took the summary of evidence.
(viii) The Officer Commanding the Squadron or Company to which the accused belongs.
(ix) A member of a Court of Inquiry which investigated the facts of the case.
(x.) Personally interested in the case.

ss. 53 (2), (3), 54 (4); R.P., 19.

Q. 4. Under what circumstances should separate charge sheets be used for trial of a soldier by Court-Martial? What is the procedure at the trial when they are used?

A. 4. Separate charge sheets are used when there are several charges against an accused which are in no way connected with each other, especially if the facts are complicated and different sets of witnesses are required to prove the various charges. In practice not more than four charges should be put in one sheet. **R.P., 62 (A)** *note.*

The accused is arraigned and tried on each charge sheet separately up to and including the finding; and then if necessary one sentence is given for all the offences proved. **R.P., 62 (C).**

Q. 5. The following sentences have been awarded at Courts-Martial:—

(*a*) Private A., convicted of fraudulent enlistment, was sentenced to one year's detention and discharged with ignominy.

(*b*) Private B., convicted of theft, was sentenced to 9 months' detention,

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(*c*) Private C., convicted of a second case of desertion, was sentenced to 56 days' imprisonment with hard labour.

Comment on these sentences, and state what action you, as Confirming Officer, would take in each instance.

A. 5. (*a*) Imprisonment should not as a rule be given for purely military offences, unless in the case of persistent offenders, when discharge with ignominy will be added. Unless Private A. has two previous convictions of desertion or fraudulent enlistment, the sentence should have been detention, without discharge; and for a first offence not more than 112 days. The Confirming Officer could send the proceedings back to the Court for revision of the sentence; or, failing that, could commute it himself to detention.

ss 44 (4), 54 (2), 57 (1); K.R., 583 (iv.), (viii.), (xi.), (xiii.).

(*b*) Imprisonment should be awarded for offences under ss 17, 18 (4), or 41, and theft must come under one of these. A sentence of not more than 112 days' imprisonment would be given for an ordinary case, without previous convictions. Nine months' detention much exceeds this. The Confirming Officer could send the proceedings back to the Court for revision of the sentence; or failing that could investigate it himself.

ss. 54 (2), 57 (1); K.R., 583 (ii.), (vii.), (xi.)

(*c*) The remarks as to imprisonment in (*a*) above apply to this case, except that as Private C. has a previous conviction of desertion, more than 112 days could be awarded.

ss. 54 (2), 57 (1); K.R., 583 (iv.), (xi.).

Q. 6 (1) What is a special finding?

(2) On what grounds can the accused offer a plea in bar of trial?

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(3) State the procedure, under all various circumstances, on a plea in bar of trial being made.

A. 6. (1) The Court may record a special finding—

(i.) When they find the charge proved with the exception of certain unimportant particulars.

(ii.) When they find an accused charged with certain offences guilty of another of a cognate nature under s. 56.

(iii.) When they are uncertain which of two alternative charges the facts proved constitute, and they come to a finding of facts.

(iv.) When they find the accused guilty, but insane when he committed the offence.

(v.) When they find the accused insane and unfit to take his trial.

ss. 56, 130; R.P. 44 (and *notes*). 57A.

(2) A plea in bar of trial may be entered on the ground that—

(i.) The offence has already been dealt with by a Civil Court, or a Court-Martial, or the Commanding Officer.

(ii.) The offence has been pardoned or condoned by competent authority.

(iii.) More than three years have elapsed since the offence was committed, or any shorter time which might bar the trial of a civil offence. **R.P. 36 (A).**

(3) The court will enter the plea in bar with the general plea; and will then hear any witnesses the accused calls in support of the plea and any address he may wish to make. The Prosecutor can call witnesses to rebut the plea and make an address in reply. The Court will then decide whether they allow the plea or not in closed Court. If they dis-

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allow it the Court is reopened and the decision announced, and the trial proceeds. If they allow it and resolve to adjourn, the Court is similarly re-opened and the decision announced. The Court then adjourns and reports to the Confirming Authority. The finding on the plea in either case requires confirmation. **R.P., 36, App. II., p. 564.**

Q. 7. On the 1st November Private A. is awarded 96 hours' detention and 10 days' C.B. On the 7th November he is again awarded 96 hours' detention and 7 days' C.B. When will the detention and C.B. finish respectively? Private A can, in each case, be received into a detention barracks on the day of the award.

A. 7. The first award of detention will end on the 5th November and the C.B. on the 14th November. The second award of detention will end on the 11th November and the C.B. on the 21st November.

R.P., 6 (A); K.R., 494 (iii.), (v.).

Q. 8. The following situations arise at Courts-Martial of which you are the President :—

(*a*) The accused objects to the prosecutor.

(*b*) A mistake in the name of the accused is discovered in the charge sheet after the plea has been entered.

(*c*) The accused pleads "guilty" to a charge of desertion, but in his statement in mitigation of punishment says, "I did not intend to desert when I went away."

(*d*) The accused refuses to plead.

How would you proceed in each of these instances?

A. 8. (*a*) The accused cannot object to the Prosecutor.

R.P., 25 (B).

(*b*) The Court can amend the charge sheet.

R.P., 33 (A).

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(*c*) The Court should alter the plea to "not guilty" and proceed with the trial accordingly.
R.P. 36 (D).

(*d*) A plea of "not guilty" should be recorded.
R.P. 35 (A).

Q. 9. What are leading questions? When may they be used at Courts-Martial?

A. 9. A leading question is one which suggests the answer required. They may only be used in the examination-in-chief when they relate to introductory matter and not to the substance of the issue; or when the witness is very young, or deficient in intellect; or in the case of a hostile witness. They may always be asked in the cross-examination.
Man., Ch. VI., paras. 107-112; Stephen, Art. 128.

Q. 10. A man surrenders at the guard-room of a regular unit, stating that he is No. 2200 Private T. Smith, who deserted four years ago.

On investigation, several witnesses are able to say he is not Private T. Smith, and prove his statement to be false. How may he be proceeded against? What punishment is he liable to?

A. 10. He should be handed over to the Civil Power and proceeded against before a Court of Summary jurisdiction for falsely representing himself to be a deserter. He is liable to imprisonment with or without hard labour not exceeding three months.
s. 152; K.R., 517.

Q. 11. At a Court-Martial the Prosecutor wishes to call a witness whose evidence is not contained in the summary of evidence given to the accused before the trial. Is this legal? Explain the procedure.

A. 11. Yes; but reasonable notice of the intention to call such witness must be given to the accused; and if this has not been done the Court must inform him that he can apply for them to adjourn after the evidence is taken, or to allow the cross-examination of the witness to be postponed. **R.P., 76.**

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Q. 12. What charges would you prefer in the following instances :—

(Statements of offence only to be written).

(1) Private A., when warned for picquet the following day, says "I will not do it; I refuse to go on picquet to-morrow."

(2) Private B., who forms one of a draft which sails for South Africa on the 10th November, absents himself on the 9th November and returns to barracks on 11th November.

A. 12. (1) Using insubordinate language to his superior officer. **s. 8 (2).**

(2) Deserting His Majesty's service. **s. 12 (1).**

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APPENDIX B.

MAY, 1903.

CAPTAINS.

FIRST PAPER (WITH BOOKS).

(*Time allowed—One Hour.*)

Q. 1. Could a soldier be tried under the Army Act for writing an anonymous and insubordinate letter to a superior Officer? If so, under what section would you charge him, and what would it be necessary to prove? (The letter does not amount to a false accusation).

A. 1. The charge would be laid under s. 40, as it is not an offence mentioned specifically in any other section of the Act.

The letter must be produced in evidence to show that its contents were as charged. A copy would not be admissible unless it were proved that the original was lost or destroyed, in which case a copy may be produced, or anyone who had read the original could give evidence as to its contents. It would be necessary to prove that the letter was written by the accused; this would be done by comparing the writing with other writings acknowledged to be his. The receipt of the letter by the superior would also have to be proved.

Man., Ch. VI., paras. 35, 36, 67; Archbold, p. 480.

Q. 2. Under what conditions might a Militiaman be tried for—

(*a*) Desertion?

(*b*) Fraudulent enlistment?

(*c*) Making a false answer on attestation?

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A. 2. (*a*) If he failed to appear when called out for embodiment; or if he was subject to military law and absented himself under circumstances which would amount to desertion in the case of a soldier of the Regular Forces.

s. 12; Mil. Act, s. 23 (1).

(*b*) If, when embodied, he enlisted into any other part of H.M. Forces, or the Navy, or any force raised in India or a colony.

s. 13; Mil. Act, s. 26 (1).

(*c*) If, when not embodied, he enlisted into any other part of H.M. Forces, or the Navy.

s. 33; Mil. Act, s. 26 (1).

Q. 3. Consider the following charge sheet, and frame another if you think it is unsound :—

CHARGE SHEET.

The accused, Captain B———, ———Corps, an Officer of the Regular Forces, is charged with

Behaving in a scandalous manner, unbecoming the character of an Officer and a gentleman,

in that he

sec. 16. at Chatham, on the 1st day of March, 1903, falsely accused Captain A———, ——— Corps, of receiving a bribe from X——— Y———, a contractor, and on the same day, when in arrest, left the station without leave of his Commanding Officer.

A. 3. This Charge Sheet is illegal, in that it discloses two offences in one charge. Further, an offence should not be charged under s. 16 when it is expressly provided for in another section of the Act, or unless it is so grossly unbecoming the character of an Officer that he is unfit to continue to hold a commission. Making a false accusation of the kind mentioned cannot be said to fall in

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with this definition, and is, moreover, an offence against s. 27 (1). The Charge Sheet should therefore be framed as follows :—

Charge Sheet.

The accused, Captain Arthur Brown, 1st Bn. Worcester Regiment, an Officer of the Regular Forces, is charged with

First Charge. s. 27 (1). Making a false accusation against an Officer, knowing such accusation to be false,

in that he

at Chatham, on the 1st March, 1903, falsely accused Captain Patrick Ahern, Army Service Corps, of receiving a bribe from Xenophon Young, a contractor.

Second Charge. s. 22. When in arrest escaping,

in that he

at the place and on the date mentioned in the first charge, when in close arrest, left Chatham without leave from his Commanding Officer.

C. D. Egerton, Lt.-Col.,
Commg. 1st Bn. Worc. Regt.

Chatham,
7th March, 1903.

ss. 16 *note*, 22, 27 (1); **R.P. 11** (A), **App. I.**

Q. 4. No. 1001, Private Y—— Z——, 2nd Battalion —— Regiment, at Plymouth on the 2nd March, 1903, about 3 a.m., was seen breaking open the door of Mr. Hope's residence, at No. 10, High Street, and a silver cup, value £5, the property of Mr. Hope, was afterwards found on the accused.

On above report, write out a Charge Sheet for a Court-Martial.

A. 4. The accused, No. 1001, Private Y—— Z——, 2nd Bn. Dorsetshire Regiment, a soldier of the Regular Forces, is charged with—

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s. 41 Committing a civil offence, that is to say burglary,

in that he,

at Plymouth, on the 2nd March, 1903, about 3 a.m., broke into the dwelling-house of Mr. John Hope, No. 10, High Street, and feloniously took therefrom a silver cup, value £5, the property of the said Mr. John Hope.

F. GAMMIDGE, Lt.-Col.,
Commg 2nd Bn. Dorset Regt.

Plymouth,
5th March, 1903.

s. 41; R.P. App. I; Man., Ch. VII., para. 66.

Q. 5. On board the hired transport "Assaye," a soldier commits a violent assault on a non-commissioned officer. State what courses are open to you, as Commanding Officer, with regard to him

A. 5. 1. If I had a warrant authorizing me to convene a General Court-Martial or a District Court-Martial, and there were enough Officers on board to form the Court, he could be tried by one of these Courts.

2. If there were enough Officers to form a Regimental Court-Martial he could be tried by this Court.

3. I could deal with him summarily, and award him up to 14 days' detention.

4. I could remand him for trial by General Court-Martial or District Court-Martial at the place of disembarkation.

ss. 46, 47, 48, 188, and *note*.

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Second Paper.

(*Time allowed—One Hour.*)

Q. 1. A military witness, before a Court-Martial, refuses to answer a question to which the Court may legally require an answer. Can this witness be punished, and if so what is the procedure?

A. 1. The President would report the circumstances to the Confirming Authority, who would order the witness' arrest and order him to be tried by another Court on a charge framed under s. 28 (4).

Q. 2. Under what circumstances, only, may the accused, or his wife, give evidence as a witness for the defence? Who explains the matter to him?

A. 2. Only at the request of the accused. It is the duty of the Judge-Advocate (or, if none, the President) to explain to him that by giving evidence he is liable to be cross-examined.

R.P. 40, and *note*; **80.**

Q. 3. The Army Act provides for the punishment of "making a wilfully false answer to a question set forth in the attestation paper." Should a false answer as to age be made the subject of a charge? Explain.

A. 3. A false answer as to age should not be the subject of a charge as a rule, for a man's age is not necessarily a matter of which he has personal knowledge, and a charge under this section should only be made when the answer is wilfully false.

s. 33 *note.*

Q. 4. Explain the difference in the procedure before a Court-Martial when the accused—

(*a*) Elects to give evidence, but *does not* call any other witness as to the facts.

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(*b*) *Does* call witnesses as to the facts other than himself.

In the latter case, when does the accused give his evidence?

A. 4. (*a*) The accused will give his evidence.

The Prosecutor can then make a second address, summing up the evidence for the prosecution, and commenting on the evidence of the accused.

The accused may then make an address in his defence, and may call any witnesses as to character.

(*b*) The accused may make an opening address.

He may then give evidence himself and call his other witnesses in defence, including those as to character.

He may then make a second address, summing up his case.

The Prosecutor can then make a second address replying on the whole case.

The accused should give his evidence first, before that of his other witnesses. He is not bound to do this; but it will carry more weight if he does so.

R.P. 40 (and *note* B), **41** (and *notes.*)

Q. 5. With reference to the rule that the evidence produced must be the best obtainable, what two sub-rules must be kept in mind when deciding on the admissibility of documentary evidence?

A. 5. (1) That a verbal account of the contents of a document can never be received if the document is available.

(2) That, subject to certain exceptions, a copy of a document is not admissible if the document itself is obtainable. **Man., Ch. VI., para. 31.**

Q. 6. A soldier is tried by Court-Martial on the following alternative charges:—1st, Embezzling £10 belonging to Regimental Funds; 2nd, Neglect to prejudice of good order and military discipline, in that he, through negligence in performing his duties, caused the loss of the same sum of money.

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The accused pleaded "*not guilty*" to the first charge, but "*guilty*" to the second. What course ought the Court to adopt ?

A 6. If they think he has pleaded "*guilty*" to the less serious charge in order to avoid the punishment entailed by the graver, they may proceed as though he had not pleaded "*guilty*" to any.
R.P., 37 (A).

Q. 7. What documentary evidence is necessary to prove :—
(*a*) A false answer on attestation ?
(*b*) Enlistment of the accused ?

A. 7 (*a*) One of the two original attestation papers, signed by the recruit on attestation.
(*b*) A copy of his attestation paper, certified to be a true copy by the Officer having the custody of the original. **s. 163 (1).**

Q. 8. In the event of an equal number of votes at a Court-Martial, what is the result :—
(*a*) In the case of a "finding."
(*b*) In the case of a "sentence"

A. 8. (*a*) The accused gets the benefit and is acquitted.
(*b*) The President has a second or casting vote.
s. 53 (8).

Q. 9. A soldier is tried on two charges :—Firstly, with stealing certain articles ; secondly, receiving the same articles knowing them to have been stolen. The Court find the accused guilty of both charges. On receiving the Proceedings what course should the Confirming Officer adopt ?

A. 9. He should order the Court to re-assemble and revise their finding, pointing out to them that in the case of alternative charges the accused cannot possibly be guilty of both.
s. 54 (2) ; R.P. 51 (B).

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NOVEMBER, 1903.

CAPTAINS.

FIRST PAPER (WITH BOOKS).

(*Time allowed—One Hour*).

Q 1. Can a soldier be tried by Court-Martial, at Gibraltar, for an offence which he committed six months previously in India? Give reasons for your answer, and quote the authority on which it is based.

A. 1. Military Courts are not like Civil Courts as regards the trial of offences in the place where they were committed; and an offender can be tried by Court-Martial anywhere within the jurisdiction of an Officer authorized to convene General Courts-Martial, although the offence was not committed at that place, but he cannot be sentenced to any severer punishment than he was liable to at the place where the offence was committed.

ss. 159, 160.

As regards time, an offender can be tried for any offence within three years after it took place, and for certain offences this time limit is extended.

s. 161.

Q. 2. A Court-Martial is assembled for revision, and the President, by reason of serious illness, is unable to attend. Describe the procedure, quoting authorities.

A. 2. The Court must adjourn and the senior member will report the fact to the Confirming Officer, who may, if the Court is not reduced below the legal minimum, and the senior member is of sufficient rank, appoint him President, and the revision can proceed; otherwise there can be no revision.

s. 53 (2); R.P., 52, App. II., p. 578.

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Q. 3. A soldier is found beyond the limits of a camp, with a pass, the signature to which has been forged. With what offences would he be charged before a Court-Martial ?

A. 3. He would be charged under s. 15 (3) with being beyond bounds; and either under s. 41 with committing a civil offence, viz., uttering a forged document, or under s. 40 with conduct to the prejudice of military discipline in using a pass purporting to be genuine, which he knew was not genuine, as the Convening Officer might decide.

Man., Ch. VII., para. 70 and **p. 555.**

Q. 4. Where a deviation from the Rules of Procedure takes place in the conduct of a trial, to what special points should a Confirming Officer direct his attention before confirming the Proceedings ?

A. 4. He must be careful to ascertain that the deviation was not such that any injustice has been done to the accused, otherwise it will be his duty to refuse confirmation. **s. 54** *note.*

Q. 5. A soldier is being tried for using threatening language to Serjeant A. The Prosecutor asks a witness: "Have you on any previous occasion heard the accused use threats about Serjeant A ?" The accused objects to the question as being irrelevant. Make your comments.

A. 5. The question is relevant and must be allowed. Although evidence may not be given of former offences to show a *disposition* to commit the offence charged, still when an *intention* can be inferred from proof of former offences, evidence of them is admissible. In this case proof of the accused having used threatening language towards Serjeant A. on a previous occasion would be relevant to show the deliberate malice or disrespect intended in the words used on this occasion.

Man., Ch. VI., para. 23.

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Second Paper.

(*Time allowed—One Hour*).

Q. 1. Under what circumstances would a Commanding Officer be justified in awarding detention for drunkenness?

A. 1. In the case of a private soldier who is liable to trial for the offence, or who already owes 20s. or upwards for unpaid fines. **K.R. 497.**

Q. 2. State the regulations as to recording in the Conduct Sheets the offences of drunkenness and absence without leave.

A. 2. Every offence of drunkenness is entered in the Company and Regimental Conduct Sheets. Every offence of drunkenness is numbered consecutively in red ink. Every offence of absence entailing forfeiture of pay, or punished by more than one day's C.B., is entered in the Company Conduct Sheet; and if the forfeiture exceeds two days' pay, or the offence is punished by a punishment entailing a regimental entry, or is dealt with by Court-Martial, it is also entered in the Regimental Conduct Sheet. **K.R. 1916, 1921.**

Q. 3. How is the nature and composition of a Court-Martial affected by the fact that the prisoner is (1) a Field Officer; (2) a Warrant Officer?

A. 3. (i.) For the trial of a Field Officer, the Court must be either a General, or Field General Court-Martial. In addition to the usual rules as to the composition of these Courts, it is further laid down that no Subaltern can be on the Court, and if possible no Captain should be a member. **s. 48 (7); R.P. 21 (b).**

(ii.) For the trial of a Warrant Officer, if he holds an honorary commission, he can only be tried by a General, or Field General Court-Martial;

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if not holding such honorary commission, he is also subject to the jurisdicton of a District Court-Martial, but the President can in no case be under the rank of Captain.

ss. 182 (4), 190 (4).

Q. 4. Describe the uses which may be made of the summary of evidence (1) When the accused pleads "*guilty*," (2) When the accused pleads "*not guilty*."

A. 4. (i.) After the accused has been convicted in accordance with his plea, the summary is read to enable the Court to determine their sentence, and is attached to the Proceedings to guide the Confirming Officer in making any remission, when confirming the Proceedings.

(ii.) It is used by the President to check the evidence given by the witnesses, who will be called upon to explain any discrepancies in their evidence as now given, and their statements contained in the summary.

R.P. 17 (E) *note*, **37** (B).

Q. 5. If, after the commencement of a trial, a charge sheet is found to be defective, to what extent may the defects be remedied?

A. 5. A mistake in the name or description of the accused may be amended by the Court at any time; if any other defect is discovered, before the Court have begun to take evidence, they must adjourn and report the matter to the Convening Officer, who may amend the charge or order a new trial. Sometimes a defect can be cured by the Court coming to a special finding. **R.P. 33, 44** (B).

Q. 6. Explain the circumstances under which a Court might "honourably acquit" the accused.

A. 6. This formula should only be used when the offence is disgraceful and such as to tarnish the reputation of the accused, and when he has come through the ordeal of the trial without the least stain on his character. **R.P. 44** (A) and *note*.

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Q. 7. A soldier is sentenced by Court-Martial to 84 days' H.L. How would such an award affect his existing good conduct pay, and future pension, and date of discharge?

A. 7. If he had any Good Conduct Badges he would lose one till a year after the termination of the imprisonment; and if he had more than one (for which he was drawing pay under the old rules) he would not draw such pay for the others while in prison. The time in prison would not reckon as qualifying service towards pension. The award would not affect the date of discharge.

s. 79; R.W. 1021, 1027, 1030, 1064 (*c*).

Q. 8. State the law as to the restitution of stolen property in the case of a soldier convicted of theft by a Court-Martial.

A. 8. The property, or any part of it, found in possession of the accused may be restored to the owner by order of the *Commander-in-Chief or the Confirming Officer; and a like order may be made with respect to any property in his possession which appears to have been obtained by the conversion or exchange of any of the stolen property. **s. 75.**

Q. 9. When a Regiment embarks for foreign service, what is done with soldiers belonging to it who are in prison?

A. 9. As soon as the orders for the embarkation are received, a Return of all prisoners, giving particulars of their cases, is sent to the General Officer Commanding, to enable him to select and arrange for the removal of those to accompany the Regiment. Such prisoners are released on the sailing of the ship. Other prisoners, sentenced shortly before embarkation to not more than twenty-one days' imprisonment, are embarked as prisoners, and treated as such on board until their sentences expire. All Court-Martial prisoners will, as a rule, be released upon disembarkation, as they cannot be re-committed to a public prison. **K.R., 622—625.**

* *Vide* **Note on p. 10.**

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Q. 10. Comment on the admissibility in evidence of an official letter written by a Commanding Officer.

A. 10. Such a letter respecting the service or discharge of any person in His Majesty's Forces would be admissible as evidence of such service or discharge. Any other letter would be inadmissible under the rule of "hearsay."

s. 163 (*b*); Man., Ch. VI., para. 59.

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MAY, 1904.

CAPTAINS.

(Time allowed—Three hours)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. State the regulations as to a Commanding Officer awarding detention for the offence of absence without leave.

A. 1. He can award detention up to 21 days, but if the award exceeds 168 hours, the number of days detention must not exceed the number of days absence. **s. 46 (4), (5).**

Q. 2. Explain clearly how the absence without leave of a soldier, after he has been fined for an act of drunkenness, affects the calculation of the amount of fine for a subsequent act of drunkenness, and point out the circumstances under which a Commanding Officer would award, for the offence of drunkenness, a fine of 10s.

A. 2. The period during which a man has been absent without leave is not counted when reckoning the time since his last case of drunkenness.

He would award 10s. when the last case of drunkenness occurred within three months of a previous one, provided it was not the soldier's second offence. **K.R., 512.**

Q. 3. Describe how the lapse of time between the commission of an offence by a soldier (of the Regular Forces) and its being found out affects his liability to be tried by Court-Martial.

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A. 3. A soldier cannot be tried for any offence committed more than three years before the date of trial, except mutiny, desertion, or fraudulent enlistment, and if he has since served for three years in an exemplary manner, *i.e.*, without an entry in his Regimental Conduct Sheet, he cannot be tried for desertion (other than desertion on active service) or fraudulent enlistment. If the man has ceased to be subject to military law since committing the offence, he can only be tried for it within three months of so ceasing to be subject, unless the offence was mutiny, desertion, or fraudulent enlistment, in which case he remains liable as just stated. **ss. 158, 161; K.R., 489.**

Q. 4. After the examination of witnesses has commenced at a Court-Martial it is found that the charge-sheet is defective. To what extent may it be amended by the Court?

A. 4. Only an error in the name or description of the accused can be amended. **R.P. 33.**

Q. 5. Show by the aid of examples the distinction between fraudulent enlistment and false answer on attestation. What documents would be admissible in evidence as proof of these offences?

A. 5. A soldier of the regular forces absents himself from his corps and enlists into another one—this is *fraudulent enlistment.*

A militiaman, not embodied, enlists into the regular forces, denying he is a militiaman—this is *false answer on attestation.*

A copy of the attestation paper is evidence to prove fraudulent enlistment, but to prove false answer on attestation one of the two original attestation papers must be produced.

ss. 13 (and *note*), **33** (and *note*), **163** (*g*), (*h*).

Q. 6. A soldier is charged before a Court-Martial with stealing goods from the married quarters of a Serjeant. The only witnesses for the Prosecution

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are the Serjeant and his wife. Objection is raised by the accused that the Serjeant's wife cannot give evidence as well as her husband. Comment on the above.

A. 6. Although the wife of the accused cannot, except in certain cases, give evidence for the prosecution, there is no rule of evidence which prevents the wife of another witness, or even of the Prosecutor, thus giving evidence. In the case under consideration, the Serjeant is not technically the Prosecutor. The evidence of the wife is admissible.

Man., Ch. VI., para. 86.

Q. 7. A soldier is being tried for insubordination. State the law as to the Prosecutor producing evidence of previous cases of insubordination.

A. 7. Before the finding, the Prosecutor cannot produce evidence of previous instances of insubordination against another superior, as evidence of general bad character, or to show a general disposition to commit a certain offence is inadmissible. He may, however, prove that the accused behaved previously in an insubordinate manner towards the same superior, to show that his conduct on this occasion was intended to be insubordinate towards this particular superior, evidence tending to show intention being admissible. After conviction, the Prosecutor produces evidence of previous insubordination, when evidence as to the accused's previous character is being given before the Court proceed to their sentence.

Man., Ch. VI., paras. 17, 20, 22; R.P., 46.

Q. 8. To what extent are the following statements admissible in evidence:—

(*a*) Statements made to a witness by another person in the presence of the accused.

(*b*) Statements made concerning the accused in a letter written by his Commanding Officer.

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A. 8. (*a*) These would be admissible to show the behaviour of the accused on hearing the statements made, but they would be inadmissible in proof of the facts stated. **Man., Ch. VI., para. 48.**

(*b*) Statements as to the service of the accused made in such letter are admissible as evidence of the facts stated. **s. 163** (*b*).

Q. 9. As an Officer Commanding a Battalion the following cases are brought before you. How would you deal with them:—

Private A.—A woman applies for his discharge on the ground that he is a married man and has deserted her.

Private B is recognised as a deserter from the Navy.

Private C has been ordered by his Company Officer to show his kit daily till further orders and has not done so.

Serjeant D, while in charge of the canteen, has watered the beer in cask.

A 9. Private A.—Cause the woman to produce evidence of her being married to the man; if this is satisfactory—then if it is within six months of his attestation either apply to the Brigade Commander for authority to stop 6d. a day from his pay for her maintenance, or have the man tried by a Civil Court for false answer on attestation, and if convicted discharge him. If more than six months have elapsed since his attestation, tell the wife he can only be discharged if the Parish on which she has become chargeable, sends a constable with a warrant for his apprehension for deserting her.

ss. 99, 145, (2); K.R., 390 (vii).

Private B.—Fill in A.F., B. 123 and send it to the Admiralty, asking whether it is desired to claim him? If the Admiralty claim him, the General Officer Commanding the District will give the

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necessary instruction; if not he will be retained for service in his present Corps and dealt with for false answer on attestation.

s. 33; K.R., 521 (vii.); 522 (i).

Private C.—Deal with the case, on a charge of disobeying a lawful command, either summarily or by Court-Martial according to circumstances.

s. 9 (2); K.R., 487.

Serjeant D.—Apply for his trial by District Court-Martial on a charge framed under s. 18 (5).

K.R. 438 487.

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NOVEMBER, 1904.

CAPTAINS.

(*Time allowed—Three Hours.*)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. (*a*) A private disobeys flatly an order given him by his Colour-Serjeant. The Commanding Officer wishes to deal with the case summarily. What is the procedure?

(*b*) Suggest a case in which a Subaltern would be justified in putting a Field Officer under arrest.

A. 1. (*a*) This is a case of the graver kind of disobedience showing a wilful defiance of military authority coming under s. 9 (1). The Commanding Officer is precluded from dealing with offences under this sub-section, and if he wishes to do so must refer the case to superior authority in a letter stating the circumstances, forwarding with it the man's conduct sheet. **K.R., 487.**

(*b*) If the orderly officer returning to the Mess after seeing "lights out" found a Major and another officer engaged in a free fight he would be justified in ordering them both into arrest.

s. 45 (3).

Q. 2. A.A. 176 (1) says "All soldiers of the Regular Forces" are subject to military law under the Army Act. A.A. 190 (8) says the term "Regular Forces" includes "His Majesty's Indian Forces." Are then the rank and file of a Sikh or Goorkha regiment triable under the Act? Explain.

A. 2. Courts-Martial for the trial of such persons may be convened under the Army Act, but the law to be

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applied to them is Indian military law; *i.e.*, the Articles of War made by the Government of India. **s. 180 (2).**

Q. 3. (*a*) A man fraudulently enlists and thereby obtains a free kit.

(*b*) A man makes away with his arms.

(*c*) A man makes away with his equipment.

(*d*) A man makes away with his clothing and necessaries.

(*e*) A man breaks a window in the guard-room.

On a trial by a Court-Martial say how the value of these articles should be shown or otherwise on the charge sheet.

A. 3. (*a*) An averment will be added to the *particulars* of the charge, stating that the prisoner thereby obtained a free kit value—

R.P., App. I. (23); K.R., 496.

(*b*) These being government property the value will be stated against them in the *particulars* of the charge. **K.R., 563.**

(*c*) These being government property the value will be stated against them in the *particulars* of the charge. **K.R., 563.**

(*d*) Those articles which are "public clothing" will have the values stated; no values will be put against the articles which are personal clothing or necessaries. **K.R., 563.**

(*e*) The value of the window will be added in the *particulars* of the charge. **R.P., App. I. (23).**

Q. 4. A soldier awaiting trial asks that Captain N. may attend the Court for the purpose of helping him. What may Captain N. do in Court (*a*) if he is still serving with his regiment, (*b*) if he has retired from the Army?

A 4. (*a*) If the Court is a General or District Court-Martial Captain N. will have all the rights of a Counsel; *i.e.*, he will have the same rights as the accused to orally examine, cross-examine, or

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re-examine any witnesses, to address the Court, to put in any plea, to make any objection or statement, and to inspect the Proceedings. If the Court is a Regimental Court-Martial he can only act as the accused's friend, as Counsel cannot appear at a Regimental Court-Martial. He only advises the accused, but cannot himself address the Court or examine the witnesses.

(*b*) Unless he is subject to military law by being employed on some military duty under the orders of an Officer of the Regular Forces (in which case he would have the rights of an Officer still serving) he can only act as the accused's friend. **R.P., 87, 88** (A), (C).

Q. 5. The statements made in the orderly-room show clearly—

That in the course of a company cricket match Serjeant A. gave Private Z. out leg before wicket; that Private Z. was very angry, and without leaving his ground began to argue; that Serjeant A. spoke to him quietly and firmly to the effect that the decision of an umpire must not be disputed; that Private Z. then began to walk towards the tent, which was behind the bowler's wicket, and that in passing Serjeant A. (who was then almost in his direct line) he suddenly raised his bat and struck him on the arm, and then walked on.

Frame a charge, and name the punishments awardable.

A. 5. The accused, No. 1904, Private Benjamin Zaccheus, 2nd Bn. Lincolnshire Regiment, a soldier of the Regular Forces, is charged with

s. 8 (2). Striking his superior officer

in that he

at Gibraltar on the 29th August, 1904, struck with

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a cricket bat Serjeant John Atkins, of the same Regiment.

C. D. EDWARDS, Lt.-Col.,
Commg. 2nd Bn. Linc. Regt.

Gibraltar,
31st August, 1904.

Unless the offence occurred on active service (which from the circumstances is hardly likely) the prisoner would be liable to imprisonment with hard labour up to 2 years; but in practice the sentence would under ordinary circumstances probably be from 56 to 112 days. If the offence took place on active service he would be liable to penal servitude for life.

s. 8 (2); R.P., App. I.; K.R. 583.

6. A charge of perjury avers three facts. State them, and say in brief detail how each is to be proved.

A 6. The charge avers that the accused

(1) When examined on oath before a Court-Martial (or other Court or Officer)

(2) wilfully

(3) gave false evidence.

The fact that the accused was duly sworn (or made a solemn declaration) must be proved by the member of the Court who administered the oath, or some other member or other person who was present and heard him sworn. The fact that he gave the evidence as stated must be proved in like manner, the mere production of the Proceedings in which the evidence is recorded is not sufficient. It must be proved that this evidence was false. One witness is not enough to do this unless corroborated in some material point.

Some fact must be proved to show that the accused acted wilfully in giving the evidence,

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knowing it to be false, or well knowing that he was unaware whether it was true or false.

s. 29 and *note;* **Man., Ch. VII., para. 72; O'Dowd, p. 89,** *et seq.*

Q. 7. In a murder case, a young unmarried woman called by the prosecution states: "On Saturday afternoon a few weeks ago, I don't know the date, I was passing the barrack gate and I saw the prisoner talking with the dead man. They were speaking low and I did not hear what they said as they were some distance away. The dead man turned round to go away, when the prisoner lifted a stick that was in his hand and hit him on the head. I saw him do it. He hit very hard. The dead man fell and lay still. I was frightened and ran away."

Counsel for the defence puts these questions in cross-examination:—

(1) Have you ever had a child?

(2) When the deceased abused and swore at the prisoner, did not the prisoner try to calm him?

(3) Did you go to the police that same day and report what you had seen?

(4) Did not the vicar turn you out of the choir last year for telling him a lie?

(5) Were you not in the habit of walking about with the deceased after dark?

(6) Come now, I am quite sure the prisoner had not a stick in his hand that day. Was it not his hand that he raised to warn the deceased to keep quiet?

(7) Oh, yes. I know all about you. You had better take care what you say. Come now, didn't the deceased strike the prisoner?

(8) What sort of a hat was the deceased wearing when you say you saw him?

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Respecting each of these in turn, say briefly whether and how far it is permissible, with reasons.

A 7. (1) Inadmissible—this would only tend to injure the witness' character, without shaking her credibility. **R.P., 92 (B).**

(2) Admissible—to try to catch the witness off her guard and make her contradict her statement in the examination-in-chief that she did not hear what was said, which would shake her credit. **Man., Ch. VI., para. 112.**

(3) Admissible—as relevant to the facts in issue. **Man., Ch. VI., para. 16; Stephen, Arts. 2, 3.**

(4) Admissible—this if true would injure the witness' character for veracity. **R.P., 92 (B); Man., Ch. VI., para. 112.**

(5) This might be admissible to show prejudice, and thus weaken the witness' credibility. **R.P. 92 (B).**

(6) Inadmissible—as it assumes facts contrary to those given in evidence. **R.P., 92(E); Man., Ch. VI., para. 113.**

(7) Admissible—this is relevant, as if true it would tend to reduce the crime from murder to manslaughter. **Man., Ch. VI., para. 16; Stephen, Arts. 2, 3.**

(8) Admissible—this is relevant to test the general accuracy of the witness' powers of observation; as if Counsel can prove her wrong in her reply, it would impeach her credibility either for veracity, or at any rate, accuracy. **Man., Ch. VI., para. 112; Stephen, Art. 129.**

Q. 8. The word "embezzlement" has one meaning under the ordinary criminal law (trials under section 41), and another under section 17. Give the two definitions, and illustrate each with an example (not with a charge).

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A. 8. Embezzlement under the ordinary law is the unlawful appropriation to his own use, by a servant or clerk, of money or chattels received by him for and on account of his master or employer, *e.g.*, a shopman receives a sovereign from a customer for goods sold for his master, and at once pockets it and never accounts for it to his employer. **Man., Ch. VII., para. 59; Harris, p. 226.**

Embezzlement under section 17 is the offence committed by anyone, subject to military law, fraudulently converting to any purpose other than the public service any money or goods with the care and distribution of which he is charged, *e.g.*, the Officer Commanding a Company converts to his own use money received by him for the payment of his Company. **Man., Ch. VII., para. 61.**

Q. 9. How does the position of a soldier who owes money differ from that of a civilian?

A. 9. A soldier cannot be taken out of the Service, or compelled to appear in person before any Court in respect of any debt due by him, which is less than £30 without costs. Neither can execution issue against his pay or military equipment; though of course his private property remains liable to satisfy the debt. Any charge on, or assignment of, his pay or pension made by a soldier is void. **ss. 141, 144.**

Q. 10. Write a clear note on the position and duties of troops when called out to assist in stopping disturbances, as laid down in the Manual, with any suggestions that occur to you for working the theory in practice.

A. 10. The position of soldiers acting in aid of the Civil Power does not in law differ from that of ordinary citizens. It is a Common Law duty of every citizen to assist the authorities in quelling disorders, and soldiers when performing this duty are under the same liability as any other citizen.

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The regulations state that, except in any sudden emergency, troops are not to be taken out in aid of the Civil Power without a written requisition from a Magistrate or Chief Constable; and that they are to be accompanied by a Magistrate while performing this duty. The Officer in command should therefore place himself under the orders of the Magistrate, and should as a rule only take action when requested by him to do so. The Officer is, however, responsible for what he does, and if he acts with unnecessary force he will be liable, even though the Magistrate ordered it. On the other hand he will be liable if he does not act when necessary, even without waiting for instructions. The law holds no one compelled to obey an illegal order, or to be justified for his illegal action because it was ordered by a superior; hence neither Officer nor men will be justified in using unnecessary force. It may be noted that troops acting against armed rebels or rioters are, strictly speaking, on active service.

s. 189; Man., Ch. XIII., paras. 14, 34, 35; K.R., 949, 957; Dicey, pp. 266, 276, 278, *et seq.*

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MAY, 1905.

CAPTAINS.

(*Time allowed—Three hours.*)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. With what object is the original charge sheet and summary of evidence sent to the President of a Court-Martial?

A. 1. To enable the original charge sheet to be annexed to the Proceedings, and to give the President an opportunity of getting a general knowledge of the case before trial takes place; and to communicate with the Convening Officer if he thinks any amendment of the charge sheet is required.

R.P. 17 (E) *note.*

Q. 2. When are the following subject to military law:—

A half-pay Officer?
An Officer of the Royal Marine Artillery?
A Yeomanry Officer?
A newspaper correspondent?

A. 2. A half-pay Officer is always subject to military law.

s. 175 (1).

An Officer of the Royal Marine Artillery is subject when not borne on the books of any of His Majesty's ships. **s. 179 (15).**

A Yeomanry Officer, if he has accepted a commission since the passing of the Militia and Yeomanry Act, 1901, is always subject; those who were commissioned before that date are only subject when—

(*a*) At training or exercise.
(*b*) Attached to troops subject to military law.
(*c*) Their corps is on actual military service.
(*d*) Serving in aid of the Civil Power.
(*e*) Ordered on military duty with his own consent.

s. 175 (5), (6); M. & Y. Act. 1901, s. 1.

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A newspaper correspondent is subject when accompanying a force on active service.
s. 175 (8).

Q. 3. What do you understand by the terms "military decoration," "foreign country," "offence of disgraceful conduct?"

A. 3. A "military decoration" means any medal, clasp, good conduct badge or medal. **s. 190 (8).**

A "foreign country" is any place not situate in the United Kingdom, India or a Colony, and not on the high seas. **s. 190 (24).**

An "offence of disgraceful conduct" is one against ss. 17 or 18 of the Army Act.

Q. 4. A battalion is marching through its territorial district. At the commencement of the day's march an offender is placed in arrest; what are the regulations as to his performing any duty? On arrival at a town can he be placed in other than military custody?

A. 4. He can be required to carry his arms on the line of march and to hand over any cash or stores of which he may have charge. He can be placed in a civil prison or lock-up for safe custody for any period not exceeding seven days on a warrant signed by the Commanding Officer.
s. 132 (2); K.R. 482.

Q. 5. Name the occasions on which a Court of Inquiry takes evidence on oath without receiving special instructions to do so. Can an Officer demand a Court of Inquiry?

A. 5. When inquiring into the illegal absence of a soldier or when held on recovered prisoners of war.
s. 72, R.P. 124 (II), 125 (E).

No. He must seek re-dress through the proper channel. **s. 42; K.R. 470.**

Q. 6. At a Court-Martial, how are objections to (1) the Judge Advocate, (2) the President, (3) a shorthand writer, (4) the prosecutor, disposed of?

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A. 6. (1). The accused cannot object to the Judge Advocate.
R.P. 25 (B).

(2). The other members will hear the grounds for the objection against the President and any witnesses the accused calls in support of the same; the Prosecutor can call witnesses to rebut the evidence adduced by the accused. They then come to their decision in closed Court. If one third of the members are in favour of the objection, it is allowed; and the senior member will adjourn the Court and report to the Convening Officer.
s. 51; R.P. 25.

(3). The accused can object on the ground that the proposed shorthand writer is not impartial. The Court will deal with the objection in the same way as an objection to a member of the Court, and if they consider it reasonable will not swear that person as a shorthand writer.
R.P. 72 (C) and *note*.

(4). The accused cannot object to the Prosecutor.
R.P. 25 (B).

Q. 7. Give the "Statement of the offence" in the case of (*a*) a serjeant charged with striking a corporal, (*b*) a private charged with striking a private, (*c*) a corporal charged with striking a serjeant.

A. 7. (*a*) Striking a soldier. **s. 37.**
(*b*) An act to the prejudice of good order and military discipline. **s. 40.**
(*c*) Striking his superior officer being in the execution of his office. **s. 8 (1)**

Q. 8. What are the rules as to the competency of the following persons to give evidence at a Court-Martial:—

(1) A member of the Court?
(2) The wife of the accused?
(3) A child?
(4) A person of bad character?

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A. 8. (1) He is competent to give evidence for the defence, but not for the prosecution; of course if it were known that the accused intended calling him, he should not have been detailed to serve on the Court.

s. 50 (3); R.P. 106 (D); Man., Ch. VI., para. 90.

(2) As a rule she can only give evidence for the defence at the request of accused; but in certain cases she can give evidence for the prosecution, *e.g.*, in cases of personal violence against her, or under the Criminal Law Amendment Act, 1885.

R.P. 80 (1); Man., Ch. VI., paras. 83—86; Stephen, Art. 108.

(3) A child is competent to give evidence if in the opinion of the Court it understands the nature of an oath, and understands the obligation to speak the truth. In certain cases under the Criminal Law Amendment Act, 1885, special provision is made for the unsworn evidence of a child.

Man., Ch. VI., para. 87; Stephen, Art. 107.

(4) Bad character does not render a person incompetent to give evidence, but it may affect the credibility of the evidence he gives.

Man., Ch. VI., para. 91.

Q. 9. Private **A** is being tried under section 8 (1). The evidence shows that he committed the offence, but that the superior was not in the execution of his office.

Private B is charged with using insubordinate language to his superior officer on the 12th March, whereas the evidence shows that the offence was committed on the 11th March.

Private C is charged with losing by neglect a waist belt, a serge frock, and two pairs of boots. The evidence shows that only one pair of boots are deficient.

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Private D is charged with absence without leave from the 11th to 18th March, the evidence shows that he was absent from the 11th to 18th February.

What findings do you consider the Court should come to in each case?

A. 9. The Court would find Private A guilty of the charge, with the exception of the words "being in the execution of his office."

The Court would come to a special finding and find Private B guilty of the charge, except that it took place on the 11th instead of the 12th March. The actual date in this case being immaterial.

The Court would find Private C guilty of the charge, "with the exception of one pair of boots."

The Court must acquit Private D, the variance between the date laid in the charge and that proved in the evidence being too great to sustain a conviction. **R.P. 44** and *notes.*

Q. 10. A deserter on being arrested states that he pawned certain articles of his regimental necessaries in the town. What proceedings might be taken against the pawnbroker, and to what penalties would he be liable if the charge were proved?

A. 10. He is liable to prosecution before a Court of Summary Jurisdiction, and unless he can prove that he acted in ignorance, he is liable for a first offence to a fine not exceeding £20 and treble the value of the articles; and if it is a second offence, to a fine of not less than £5 or more than £20 and treble the value of the goods, or to imprisonment not exceeding six months. **s. 156 (1).**

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NOVEMBER, 1905.

CAPTAINS.

(Time Allowed—Three Hours).

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. A soldier applies to a Justice of the Peace for an extension of furlough. Explain the procedure on the part of the Justice, the powers of limitation of the Commanding Officer, and the liability to punishment (in certain circumstances) of the soldier.

A. 1. If the Justice thinks there is good cause, he may extend the furlough for any period not exceeding one month, reporting to the man's Commanding Officer that he has done so. The Commanding Officer can cancel the extension and order the man to rejoin at once. If the man does not rejoin he is liable to punishment for absence; or if he has obtained the extension by making a *false* statement to the Justice he will be liable to punishment. **ss. 27, 173; K.R., 1312.**

Q. 2. Give a summary of the rules laid down for the guidance of Officers in Command of detachments acting in aid of the Civil Power.

A. 2. Troops are not to be taken out on this duty without the requisition of a Magistrate, except in cases of sudden emergency. They must march in military order, and be accompanied by a Magistrate. The detachment will be told off into four sections, each under an Officer or Non-Commissioned Officer, if the total strength is not more than twenty files;

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if it exceeds that number, it will be told off into more than four sections. If the Magistrate requires the aid of the troops he will request the Officer "to take action" This request should be in writing, but not necessarily so. The Officer will then act at his discretion. If he thinks immediate action unnecessary, he need not act at once. If he thinks it necessary to fire he will give the order. Only the sections or files named will fire. All action will cease as soon as the Officer thinks further force unnecessary. Before fire is opened the mob must be warned that it will be effective. Fire must not be directed over the heads of the crowd. **K.R., 949—965.**

Q. 3 Under what authority has the Crown power to make
(1) Articles of War?
(2) Rules of Procedure?

Is this power likely to be exercised in the first-mentioned case?

A. 3. (1) Under the Army Act, s. 69.
(2) Under the Army Act, s. 70.
No.

Q. 4. You agree to act as the accused's friend at a Court-Martial on a man of your company. Owing, however, to a certain communication made to you by the accused, you decide to withdraw from the position. Can you be called on at the trial to answer questions as to the nature of that communication?

Can a witness be asked a question as to the votes given by members at a previous Court-Martial?

A. 4. Unless the communication was made for the furtherance of any criminal purpose, no questions could be asked about it.
Man., Ch. VI., para. 101; Stephen, Art. 115.

No. **A.O. 81.**

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Q. 5. What is a "cartel?" To what extent may the services of a prisoner released on parole be utilized by his state?

A. 5. A cartel is an agreement between belligerent states for an exchange of prisoners.

L.W., para. 95; Hall, sec. 134.

He cannot be employed again on active service against the same enemy during the same war; but he can be employed in duties at home, such as drilling recruits, or quelling civil disturbances, or in fighting against another belligerent not the ally of his original captor. **Hall, sec. 133.**

Q. 6. At the trial of Private W., charged with stealing a ring belonging to another man of his company, a witness states he was sitting on the same cot with, and talking to, the accused, when Private S. came into the barrack room and said that the ring had been found in Private W's. box. The accused objects to this statement being given in evidence. What should be the ruling of the Court? And why?

A. 6. The Court should allow the statement to be given in evidence. It does not come under the rule of hearsay. Statements made in the *presence* of the accused may be given in evidence, not in proof of the facts alleged in the statement, but in order to show the conduct of the accused on hearing the statement made.

Man., Ch. VI., para. 48; Stephen, Art. 8

Q. 7. Give your reasons for considering the following liable or otherwise to trial by Court-Martial:—

Quarter-Master-Serjeant A.—Discharged to pension 10th January, 1902. On the 3rd May, 1902, it is found that certain stores that were under his charge are deficient.

Private B.—On the night of the 11th March, 1902, Serjeant M. was struck whilst walking from the Serjeants' Mess to his quarters, but

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his assailant made off unrecognised in the dark. On the 4th May, 1905, Private R., when brought before his Commanding Officer on another charge, confesses it was he who had struck the Non-Commissioned Officer.

Private C.—Deserted and made away with his kit on the 10th April, 1902. Arrested on the 20th June, 1905.

Private D.—Undergoing a sentence of 6 months' imprisonment and discharge with ignominy. A serious case committed prior to his sentence is brought to light.

A. 7. Q.-M.-Serjeant A. cannot be tried, as more than three months have elapsed since he ceased to be subject to military law. **s. 158 (1).**

Private B. is not liable to trial, as more than three years have elapsed since the commission of the offence. **s. 161.**

Private C. is liable to trial for the offence of desertion, provided he has not since served in an exemplary manner for three years; but he cannot be tried for making away with his kit, as the offence occurred more than three years ago. **s. 161.**

Private D. can be tried for the offence, provided it comes within the three years rule, as he remains subject to the Army Act during the period of his imprisonment, notwithstanding his discharge. **s. 158 (2).**

Q. 8. Can a person who considers himself wronged by the action of a Court-Martial bring an action for damages against the members who composed it? Explain the law on the subject.

A. 8. Provided he commences his action within six months of the injury, or in the case of a continuing injury (*e.g.*, imprisonment) within six months of its ceasing he can bring an action against the whole Court collectively, or against any individual

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member. But if he, in the first instance, brings his action against one or more of the members and obtains judgment, he cannot afterwards sue the others.

s. 170; Man., Ch. VIII., paras 40, 42, *note.*

Q. 9. In what cases may the sentence of a Court-Martial be commuted to general service? What is the object of this commutation?

A. 9. When a man has been convicted of desertion or fraudulent enlistment, or his trial for these offences have been dispensed with, or when he has been sentenced by Court-Martial to detention for three months or more, the prescribed authority can commute the sentence, wholly or partly, into general service. **s. 83 (7).**

This is done to enable a man, who has got into trouble at home, to be sent abroad to fresh surroundings, where, by reason of greater activity or otherwise, he may be removed from his former temptations and get a fresh start, and so perhaps, be converted into a good soldier.

Man., Ch. X., para. 11.

Q 10. A witness, in giving evidence before a Court-Martial, proposes to read extracts from a diary kept by himself.

Should the Court allow him to do so?

A. 10. A witness may not read his evidence, but he may refresh his memory by reference to notes such as the diary, provided the Court is satisfied that they were made when the matter referred to was fresh in his mind.

Man., Ch. VI., paras. 70, 71; Powell pp. 336-339; Stephen, Art. 136.

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MAY, 1906.

CAPTAINS.

(*Time allowed—Three hours.*)

[*The Manual of Military Law and the King's Regulations may be used*].

Q. 1. Give a brief explanation of the law as to the punishment by a Military Court of an offence which has been previously dealt with by a Civil Court and, conversely, as to the punishment by a Civil Court of an offence already dealt with by the military authorities.

A. 1. If an offence has already been dealt with by a Civil Court, the offender cannot afterwards be tried by a Military Court for the same offence; if an offender has been dealt with by the military authorities and is afterwards tried by a Civil Court for the same offence, the Court must, in awarding punishment, take into consideration any punishment the offender has already undergone by order of the military authority for the same offence.

s. 162.

Q. 2. Militia recruits are out for preliminary training at a regimental depôt. In the immediate neighbourhood are living a number of Army Reservists. In the event of troops being required to put down a riot, could the Officer commanding the depôt avail himself of the services of the above-mentioned Militia and Army Reservists? Give reasons and the authority on which they are based.

A. 2. Supposing the Officer commanding the depôt to be the Officer commanding the garrison, he could, on the written requisition of a justice of the peace, avail himself of the services of all the foregoing.

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Army Reservists can be called out for this purpose under R.F. Act, s. 5. The Militia cannot be called up to aid the civil power; but if any of them are actually up for training—as in this case—they can be so used, and have been in the past.

Clode, Vol. II., pp. 135, 138.

Q. 3. Distinguish between a "summary of evidence" and an "abstract of evidence." To what extent may the former be utilized during a trial by the Court-Martial before whom it is laid?

A. 3. The "summary of evidence" is the statement of all the witnesses who gave evidence at the investigation before the Commanding Officer, taken down in writing and signed by them in the presence of the accused and such officer as the Commanding Officer directs. **R.P. 4** (C), (E).

An abstract of evidence is taken and given to an officer, who is charged with an offence, in cases where he has not availed himself of his right to have a "summary" taken. **R.P. 8.**

If the accused pleads "*not guilty*" it is used by the President to check the evidence given by the witnesses. If he pleads "*guilty*" it is read to the Court to let them see the circumstances under which the offence was committed and to guide them in awarding sentence. It is attached to the Proceedings and forwarded to the Confirming Officer to assist him in a similar manner.

R.P. 17 (E) *notes*, **37** (B).

Q. 4. How would a Commanding Officer deal with the following cases when brought before him at the orderly-room :—

(1) A woman states that she recognises Private A. as her husband, who deserted her some 12 months ago, and claims his discharge?

(2) Serjeant B. is charged with having been taken into custody by the civil power and fined for being drunk and disorderly?

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A. 4. (1) If less than six months have elapsed since the man's attestation, the Commanding Officer can either apply to the Brigade Commander to have 6d. a day stopped from the man's pay to support the wife, or (if he was married before enlistment) can have him tried by a Civil Court for false answer, and on conviction discharge him. If more than six months have elapsed since attestation, the Commanding Officer will inform the wife that the man can only be handed over if his Parish Authorities claim him for deserting his wife. He will, however, if the wife claims alimony, apply to have his pay stopped as above.

ss. 99, 145 (2); K.R., 390 (vii).

(2) Serjeant B., having been dealt with by the Civil Power for his offence, cannot be dealt with by his Commanding Officer or a Court-Martial. His Commanding Officer will, however, report the case to the Brigade Commander, who will decide whether he should be reduced under s. 183 (2) of the Army Act. Owing to the abolition of the office of Commander-in-Chief this power is at present in abeyance. **ss. 162 (6), 183 (2); K.R. 506.**

Q. 5. In the course of a trial a Court-Martial thinks it desirable that the place where the alleged offence was committed should be inspected by them. Describe the procedure. Would it be possible for the Court to adjourn to the quarters of a sick witness for the purpose of taking his evidence?

A. 5. The President or Judge Advocate, if there is one, must enter a record in the Proceedings of the adjournment of the Court to the *locus in quo*. The view must be in the presence of the whole Court, together with the Prosecutor and the accused. **s. 57 (3); R.P. 63** (B).

Yes, the procedure would be similar to the foregoing.

Q. 6. At a trial by Court-Martial the prisoner does not elect to give evidence. May the prosecutor comment on this? Can the prosecutor be called upon to give evidence as a witness?

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A. 6. No. **R.P. 40** (3B) *notes.*
The Prosecutor may give evidence, but, except on active service, he should not give evidence if it can be avoided, except to prove a date or other formal matter, or produce documents. **R.P. 39** (B) *note.*

Q. 7. Under what circumstances would two accused persons be tried together on one charge sheet? Describe how the general procedure of the Court would be affected in the case of such a joint trial.

A. 7. Two accused persons may be tried together for an offence committed together, provided neither claims a separate trial on the ground that the evidence of the other is material to his defence.
s. 15.
The procedure would be the same as usual except that each must have a separate right of challenge, make a separate plea and defence; all of which will be entered on the Proceedings. The Court will record a separate finding and sentence for each accused. If either of them calls any witnesses in his defence, the addresses on behalf of both the accused will be made before the Prosecutor replies, and he will only make one reply for both cases.
ss. 61, 71 (and *notes*).

Q. 8. "Attempting to desert," "attempting to fraudulently enlist," "attempting to escape from custody," "offering violence to a Non-Commissioned Officer." Illustrate by examples how the above offences might arise, and point out the sections of the Army Act under which they would be tried.

A. 8. "*Attempting to desert.*"—Serjeant A., the caterer of the Serjeants' Mess, is arrested when absent without leave, on board a steamer at Southampton, sailing for New York, dressed in plain clothes with a ticket for New York in his possession. There is a serious defalcation in his mess accounts. He would be tried under s. 12.
"*Attempting to fraudulently enlist.*"—Private B., absent from his Regiment, enlists in London for

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the Royal Artillery; on being taken by the recruiter to St. George's Barracks for attestation, he is recognised by another Recruiting Serjeant, who belonged to his Regiment. He would be tried under s. 40.

"*Attempting to escape from custody.*"—Private C., a soldier under sentence in a detention barrack, finds the door of his cell unlocked and goes out with a view to escaping, but is seen trying to climb the outer wall and apprehended. He would be tried under s. 22.

"*Offering violence to a Non-Commissioned Officer.*"—Private D., on being ordered into confinement by Corporal E. for refusing to obey an order, makes a rush at the Corporal and tries to strike him, but is seized by the escort, and the attempted blow stopped. He would be tried under s. 8 (2).

Q. 9. The following cases are brought before a Commanding Officer for investigation. How would they be dealt with—

Private A. confesses that he is a deserter from the Navy?

Private B. is discovered to belong to the Reserve and to be drawing Reserve pay?

Private C. is recognised as a gunner of the Royal Artillery?

Private D. is recognised as belonging to the Militia Battalion of the Regiment?

A. 9. Private A. will be required to sign the form of confession given in K.R. 542. This, together with A.F. B 123, will be sent by the Commanding Officer to the Secretary of the Admiralty asking if it is desired to claim him. Unless he is so claimed, he will be held to serve in his present corps and dealt with for an offence of false answer on attestation. **s. 33; K.R. 521** (vii), **522** (ii).

Private B. A.F. B 123, will be sent by the Commanding Officer to the Officer i/c Records of his former corps. On being received back completed,

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the General Officer Commanding will decide whether he is to be relegated to the Reserve or held to serve on his last attestation. If tried, he will be dealt with for false answer on attestation.

ss. 18 (5), 33; K.R. 521 (v), 522 (iii).

Private C.—A.F. B 123 will be sent by the Commanding Officer to the Officer i/c Records, Woolwich or Dover, according to which branch of the Artillery the man was in. On being received back completed, the General Officer Commanding will decide in which corps he is to be held to serve. He would be tried for fraudulent enlistment.

s. 13; K.R. 521 (ii), 522 (i).

Private D. The case will be referred to the Officer Commanding the Militia Battalion, who will give the certificate laid down in K.R. 530. The Officer Commanding his present unit can then dispose of the case without punishment, but imposing the stoppages authorized by the Pay Warrant.

s. 138 (5); R.W. 914; K.R. 522 (iv), 529—531; M.R. 398.

Q. 10. Explain clearly the meaning of a "deposition" and a "dying declaration." Under what circumstances are they respectively admissible in evidence before a Court-Martial?

A. 10. A *deposition* is a statement on oath made by a witness at a preliminary inquiry, in the presence of the accused, who must have had an opportunity of cross-examining, and signed by the justice before whom it was taken. Such depositions may, under certain circumstances, be used in Civil Courts; but it is submitted the occasion for their use could never arise before a Court-Martial, for the very fact that the Civil Power had taken up the case would oust the jurisdiction of a Court-Martial, under s 162. **Man., Ch. VI., para. 57.**

A *dying declaration* is a statement made by a person since deceased as to the cause of his death. This statement may be used at the trial of a person

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charged with the murder or manslaughter of the deceased, provided it is proved to the satisfaction of the Court that the declarant was at the time of making the declaration in actual danger of death, and had given up all hope of recovery.

Man. Ch. VI., para. 49; Stephen, Art. 26.

Q. 11. State what happens in the following cases:—

(*a*) The Confirming Officer confirms the finding, but not the sentence.

(*b*) The Confirming Officer sends back the sentence for revision.

(*c*) The Confirming Officer refuses to confirm the proceedings.

(*d*) The Confirming Officer disapproves of the finding of acquittal.

A. 11. (*a*) The accused will have a record of the conviction of the offence made against him, but will undergo no punishment or penalty except such as are consequential on conviction, *e.g.*, forfeiture of service on conviction of desertion.

ss. 54 (6), 79; K.R. 591.

(*b*) The Court will re-assemble. All the original members should be present, in any case there must be a legal minimum, and a duly appointed President of sufficient rank. The Court cannot take any fresh evidence. They can either adhere to their former sentence, or revoke it and pass another, which, however, must not be an increase on the former one.

s. 54 (2); R.P. 52.

(*c*) The proceedings are of no effect and the accused can be tried again. **s. 54 (6).**

(*d*) The Confirming Officer cannot make any remarks in the Proceedings; but will report the matter to superior authority.

R.P. 51 (A); K.R. 590.

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NOVEMBER, 1906.

CAPTAINS.

(Time allowed—Three hours.)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. How does the Officer Commanding a Company deal with the offences of Non-Commissioned Officers? What record does he in the first instance make of the disposal of offences of private soldiers, and what becomes of the record thus made?

A. 1. If the Non-Commissioned Officer is below the appointment of Lance-Serjeant, the Officer Commanding the Company can admonish or reprimand him, or can reserve the case to be disposed of by the Commanding Officer. If the Non-Commissioned Officer is of higher rank, the Officer Commanding the Company cannot deal with it.

If he deals with the offence of a Private himself he enters his award in the Minor Offence Report, which at the end of each week he sends into the orderly-room to be attached to the Guard Report for the day. If the man is dealt with by the Commanding Officer the entry is made in the Guard Report. If the award involves an entry in the Conduct Sheets it will also be made.

K.R., 484-486, 499, 1916, 1921.

Q. 2. A soldier, when drunk, commits a serious offence for which he is sent before a Court-Martial for trial. State the considerations which should influence a Commanding Officer in deciding as to whether a distinct charge for drunkenness should at the same time be preferred. In the event of a charge for drunkenness not being preferred, how should the drunkenness be disposed of by the Commanding Officer?

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A. 2. It is assumed the word "soldier" here means private soldier. In this case the Commanding Officer will deal with the charge of drunkenness summarily unless the offence was committed on active service or on duty, or after the offender had been warned for duty, or found unfit for duty, or has four previous cases of drunkenness recorded against him in the last twelve months. If he deals with the case summarily he will award a fine according to scale, or note in the Guard Report—"No punishment; awaiting trial on another charge."

s. 19; K.R., 511.

Q. 3. A soldier in arrest, while being conveyed to the guard detention room, assaults the Non-Commissioned Officer in charge of the escort. Make out a "statement of offence" in two forms, one of which would admit of the summary disposal of the offence by a Commanding Officer, and one which would necessitate a trial by a Court not inferior to a District Court-Martial.

A. 3. (*a*) Striking a person in whose custody he was placed.

(*b*) Striking his superior officer.

The former charge could be disposed of by the Commanding Officer; the latter would have to be referred to superior authority.

ss. 8 (2), 10 (2); K.R. 487.

N.B.—There is no charge which *must* be dealt with by a "Court not inferior to a District Court-Martial;" as the superior authority could, on the case being referred to him, always direct that it should be tried by a Regimental Court-Martial or disposed of summarily. **K.R., 547.**

Q. 4. Under what sections of the Army Act would the following offences be tried? Give your reasons:—

(*a*) A soldier of the Regular Forces is found serving in a Colonial levy raised by the Natal Government

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(*b*) A soldier who is a defaulter is stopped at the barrack gate when attempting to leave barracks.

(*c*) A Serjeant drilling recruits strikes one of them with a cane.

(*d*) A stableman is found asleep in a stable.

A. 4. (*a*) s. 13. Because enlistment by a soldier of the Regular Forces into any force raised by a Colony has been made fraudulent enlistment by the Army (Annual) Act, 1906.

(*b*) s. 40. The offence of breaking out of barracks was not completed or it would have been charged under s. 10 (4). Attempts to commit any military offences not specially provided for are charged under this section. (*Notes*).

(*c*) s. 37. Because the offender being a Non-Commissioned Officer is liable under this section.

(*d*) s. 40. Because being only a stableman, and not a sentry, he is not liable.

s. 6 (1*k*); K.R. 560.

Q. 5. State the regulations as to the trial and punishment of Warrant Officers by Court-Martial. What additional power has been recently granted to Courts-Martial in respect of the punishment of Non-Commissioned Officers?

A. 5. A Warrant Officer cannot be tried by any Court inferior to a District Court-Martial; and if holding an honorary commission only by a General, or Field General Court-Martial. The President of a District Court-Martial for the trial of a Warrant Officer must not be below the rank of Captain. If a Warrant Officer has an honorary commission he can only be sentenced to the same punishments as an Officer, otherwise to those to which a soldier is liable except that a District Court-Martial can only sentence him to:—forfeiture; fine; stoppages; dismissal; reduction to the bottom or any other place in his rank, or to an inferior class of Warrant

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officer (if any); or reduction to a lower grade, or, if originally enlisted as a soldier, to the ranks.

ss. 182, 190 (4), (6).

A Court-Martial can now sentence a Non-Commissioned Officer to forfeiture of seniority of rank.

s. 44.

N.B.—Since this paper was set further additional power has been given to sentence a Non-Commissioned Officer on active service to summary punishment, and forfeiture of pay for any period not exceeding three months.

s 44, provisoes (5), (6).

Q. 6. Private A. is charged with stealing from a comrade the sum of £5, and some £2 of the money stolen is found upon his person when arrested. For what amount would stoppages be awarded by the Court-Martial, and what further action might be taken in respect of the money recovered?

A. 6. The Court would put him under stoppages for the full amount stolen—£5. The Confirming Authority or *Commander-in-Chief could order that the £2 found on the accused be handed over to the owner, and the actual amount stopped from Private A. would then be the balance required to make up the total £5. **ss. 75 (1), 138 (3)** and *notes.*

Q. 7. An accused before a Court-Martial is defended by Counsel, and has the option of either giving "evidence" himself or making a "statement." How does the one differ from the other?

A. 7. Such a statement differs from evidence in the following way:—

(1) It is not on oath.
(2) May be in writing.
(3) Is not subject to the rules of evidence.
(4) The accused cannot be cross-examined on it.
(5) Is delivered as a consecutive statement; whereas evidence would frequently be a series of answers to questions.
(6) Is delivered from the position where the accused is, instead of from the place where witnesses give their evidence.

* *Vide* **note on p. 10.**

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Such a statement will be made before the address of the Counsel and the procedure will be the same as though the accused had called witnesses to facts other than himself. **R.P. 94** (and *notes*).

Q. 8. How would the following cases be treated?

(*a*) A soldier wishes to be transferred to another corps in order to serve with his brother.

(*b*) The 4th Battalion of an Infantry Regiment is ordered to be disbanded, but the authorities are desirous that the men should complete the term of their original enlistment.

A. 8. (*a*) Provided both units are in the same country the Officer Commanding the Corps in which the elder brother is will refer the application to the Officer Commanding the Corps in which the younger brother is, who, if he is satisfied a *bona fide* relationship exists, may sanction the transfer of the younger brother to his elder brother's Corps, if he is willing to be so transferred. If the Officer Commanding objects to make this transfer the General Officer Commanding can sanction the elder brother being transferred. If both Corps are not in the same country special application would have to be made to the War Office.

s. 83 (2); K.R., 323, 333, $\frac{82}{86}$.

The men of this battalion can be posted to either of the other battalions of the regiment, without their consent. **s. 82** (and *notes*).

Q. 9. What is the meaning of the "best evidence," and how many witnesses are sufficient for a conviction? Compare the value of direct evidence and indirect, or circumstantial evidence.

A. 9. The "best evidence" means that the best obtainable must be produced, and none which would lead to the supposition that better evidence is being kept back. The rule applies chiefly to documentary evidence, where the "best evidence" of the contents of a document is the production of the

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document itself, and a copy or the oral evidence of its contents is only admissible under certain conditions settled by law. One credible witness is as a rule sufficient to obtain a conviction. The two principal exceptions are that by Statute two witnesses are required in cases of treason, and that in cases of perjury a second witness is required to corroborate the principal one in some material point. **Man., Ch. VI., paras. 30, 31, 45.**

The value between direct evidence and circumstantial evidence depends on the credibility of the witnesses and their opportunity for becoming cognizant of the facts to which they testify in the first case, and the strength and fulness of the chain of evidence in the second. It has been said that "facts cannot lie, which witnesses can and do," but it must always be remembered that facts may mislead, and be capable of a wrong construction. Hence a Court must be very careful in convicting on circumstantial evidence, and before doing so should be satisfied that the facts proved in evidence are inconsistent with any other conclusion than the guilt of the accused.

Man., Ch. VI., paras. 41, 42.

Q. 10. "Detention" has been inserted in the Scale of Punishments, s. 44. State what you know as to this punishment.

A. 10. Detention, which was introduced to avoid the stigma attaching to imprisonment, is awarded for purely military offences, and when it is not intended to discharge the accused. It comes next after imprisonment in the Scale of Punishments, and the latter punishment can be commuted into detention for a not longer period. It can be given by any Court, whereas imprisonment cannot now be given by a Regimental Court-Martial. In practice the soldier undergoes much the same treatment, except that he cannot do his punishment in a prison, but is committed to a detention barrack. **ss. 44, 47 (5), 63 (1); K R., 583.**

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MAY, 1907.

CAPTAINS.

(Time allowed—Three hours).

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. As a Commanding Officer deal summarily with the following cases in accordance with the remarks given for guidance:—

Name.	Offence.	Remarks for guidance as to punishment.
Private A.	Drunk in barracks 1st July. Fifth case in 12 months; last case 30th March.	Maximum *minor* punishment and fine to scale.
Private B.	Absent off pass 12 midnight, 29th June, till 4 p.m., 2nd July.	Maximum punishment.
Private C.	Absent off pass 10 p.m., 1st June, till 24th June.	Maximum punishment.
Lance-Corporal D.	Neglect of duty when Orderly Corporal.	Treat severely.

A. 1. Private A. Fined 7/6 and 14 days' C.B.
s. 46 (2), (9); K.R., 493 (iv.), 512.

Private B. 168 hours' detention.
s. 46 (2), (5); K.R, 493 (1).

Private C. 21 days' detention.
s. 46 (4), (5); K.R., 493 (i).

Lance-Corporal D. Deprived of lance stripe.
s. 183; K.R, 499

Q. 2. The following cases are brought before you as a Commanding Officer on 1st June, 1907. For what

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offences, and under what sections of the Army Act would you propose that they should be tried by Court-Martial?

Private A. has struck Private X. on the head with a stick and severely injured him.

Private B. has confessed desertion from another regiment, and making away with his kit on 1st January, 1904.

Private C. has confessed that he deserted from the Navy in June, 1905.

Private D., a Militiaman, who has joined for training in 1907, has been absent from previous trainings in 1903, 1904, 1905 and 1906.

A. 2. Private A. Conduct to the prejudice of good order and military discipline, under s. 40.

Private B. Fraudulent enlistment, under s. 13.

He cannot be tried for making away with his kit as the offence occurred more than three years ago, and if he has since enlistment served for three years in an exemplary manner, he cannot be tried at all. s. 161.

Private C. False answer on attestation, under s. 33.

Private D. Absence without leave, under s. 15.

Four charges, one for each absence. He will be liable to serve an extra year for each absence from training.

Mil. Act, ss. 27, 43.

Q. 3. Distinguish between a pass and a furlough. How would a soldier obtain an extension of furlough in case of sickness, and what action would be taken by his Commanding Officer if he obtained an extension of furlough under false pretences?

A. 3. A pass is a written permission to be absent for a period of not more than six days; for longer periods a furlough is necessary—which is also a written permission, but of different form.

K.R., 1319.

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If time allowed, the man should apply to the Officer Commanding his Squadron or Company, supporting his application by a medical certificate. If there is not time for this, he should apply to (i.) the nearest Staff Officer, (ii.) the Commanding Officer of any Unit or Detachment, not below the rank of Captain, (iii.) to a Justice of the Peace. Any of the foregoing are authorized to grant him an extension not exceeding one month, reporting their action to the man's Commanding Officer.

s 173; K.R., 1312.

The Commanding Officer can punish the man summarily or send him to trial by Court-Martial for an offence under s. 27 (4). **K.R., 487.**

Q. 4. Is it necessary that a Prosecutor at a Court-Martial should be sworn? Can the Prosecutor remain present when the Court is cleared? May the Prosecutor cross-examine the accused, when the latter elects to himself give evidence for the defence?

A. 4. The Prosecutor is not sworn as such—as he is not a Member of the Court. If, however, he gives evidence, even only to produce a document, he must be sworn like any other witness.

R.P., 82 (A); Man., p. 583.

No. When the Court is closed only the Members, Judge-Advocate and Officers under instruction can remain. All then take an oath of secrecy. **s. 52, 53 (5); R.P., 27 (A), (B), 63 (A).**

Yes. He can cross-examine the accused like any other witness, and even ask him questions tending to incriminate him as to the offence for which he is being tried. **R.P., 80 (3).**

Q. 5. Explain, with the aid of an example, how a defect in the particulars of a charge may be amended by the finding of the Court. Give also an example of a case when a soldier accused of a distinct offence may be found guilty of another offence of a similar but less serious character.

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A. 5. A soldier is charged with losing by neglect a lot of his kit. The evidence proves the charge with the exception of certain of the articles specified. The Court would find him guilty of the charge with the exception of (the articles not proved to be lost). **R.P. 44** (B), (C).

A soldier is charged with desertion. The Court can find him not guilty of desertion, but guilty of absence without leave. **s. 56 (3).**

Q. 6. You are the senior officer in charge of drafts going to India on a hired transport. Describe the powers you possess to maintain discipline. How would your powers be restricted in the event of the troops being conveyed on one of His Majesty's ships?

A. 6. The Commanding Officer of troops on a hired transport has all the powers of a Commanding Officer, including the power of convening a Regimental Court-Martial, irrespective of his rank.

ss. 47 (1), 188; K.R., 1574.

On board a King's ship the troops are under the Naval Discipline Act; and the Order in Council made under that Act for their discipline. The Commanding Officer can only award the minor punishment laid down in the table published with the Order in Council. Imprisonment or confinement in a cell can only be awarded by a warrant signed by the captain of the ship. A Regimental Court-Martial is the only Court that can be held on such a ship, and can only be assembled with the concurrence of the Captain. It can only try Non-Commissioned Officers, and can only award reduction, fines and stoppages.

s. 189; Man., pp., 605, 609.

Q. 7. A witness before a Court-Martial is, as a rule, obliged to answer all questions put to him. State in general terms the various cases in which a witness would be justified in refusing to answer.

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A. 7. He is not required to answer any question which will incriminate him (except an accused giving evidence in his defence); or any question relating to state affairs, without the sanction of the Head of the Department concerned; or to disclose the names of persons through whom information as to the commission of offences has been received. A husband or wife is not compelled to disclose any communication between them during marriage. A legal adviser cannot be compelled to disclose any communication made to him professionally, without the client's sanction. A Member of a Court-Martial cannot be asked as to the votes of members at that Court.

Man., Ch. VI., paras. 93, 96, 99—101; A.O., 9/01.

Q. 8. Explain fully the regulations as to the entry in the regimental books of the conviction of a soldier by a Civil Court. In what case would no entry be made?

A. 8. The clerk of any Civil Court is bound on application by the man's Commanding Officer to furnish a certified copy of the conviction on payment of a fee. Every such conviction is entered in the man's company and regimental conduct sheets, unless no punishment has been awarded, or in the case of a Court of Summary Jurisdiction a fine only, and the offender has not suffered imprisonment for non-payment of the same. In these cases the Commanding Officer may apply to an officer not below the rank of Brigadier-General, not to make an entry.

s. 164; K.R., 1916 (iii.), 1921.

Q. 9. Under what circumstances, to what offenders, and for what offences can "field punishment" be awarded on active service? Give your opinion as to the value of the punishment.

A. 9. On active service, to any soldier of any rank, for any offence. **s. 44, proviso (5).**

This is a matter of individual opinion.

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Q. 10. Describe the duties of a Confirming Officer in the following cases, considered separately. He is of opinion—

(1) That the sentence of the Court is too lenient.

(2) That the accused has been convicted on hearsay evidence.

(3) That the proceedings are irregular but not absolutely illegal.

(4) That the finding of acquittal is not in accordance with the evidence.

A. 10. (1) He can make a minute to that effect in the Proceedings ; but this remark must be separate from the minute of confirmation. **K.R., 589.**

(2) He can send the Proceedings back to have the finding revised ; or if this be impossible he must refuse confirmation. **s. 54 (2)** and *notes.*

(3) If the irregularity is not such as to cause injustice to the accused he can confirm making such remission of sentence (if any) as he may consider just. **K.R., 591.**

(4) He will not annex his remarks to the Proceedings but will embody them in a letter to the Army Council.

s. 54 (3) ; K R, 590 ; A.O, $\frac{227}{08}$

Q. 11. State the regulations as to the (1) assembly, (2) constitution, (3) method of taking evidence, and (4) record of proceedings of a Court of Inquiry assembled to determine the illegal absence of a soldier.

A. 11. (1) The Court is assembled as soon as possible after the man has been 21 days absent.

(2) It consists of three officers.

(3) It takes evidence on oath.

(4) A record of the declaration of the Court is entered in the regimental books on A.F. B 115, and the proceedings are then destroyed.

s. 72 ; R.P., 125 ; K.R., 673.

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Q. 12. Under what circumstances are men in the Army Reserve liable to be tried by Court-Martial? Show that in a modified way they are always subject to military law.

A. 12. Men can be tried by Court-Martial who—

(*a*) Fail on two consecutive occasions to comply with orders respecting their pay.

(*b*) Fail to attend at any place when ordered.

(*c*) Are insubordinate to any officer or non-commissioned officer acting under the Reserve Forces Act.

(*d*) Fraudulently obtain any pay or other money.

(*e*) Fail to comply with orders or regulations.

(*f*) Fail to attend when called out for training, permanent service, or in aid of the Civil Power **R F. Act., ss. 6, 15.**

In so far as men of the Reserve can be tried by Court-Martial at any time for any of the offences against s. 6, specified above, they may, perhaps, be considered as being in a modified way always subject to military law.

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NOVEMBER, 1907.

CAPTAINS.

(*Time allowed—Three Hours.*)

[*The Manual of Military Law and the King's Regulations may be used.*]

Q. 1. To what extent do the provisions of the Army Act apply to His Majesty's Indian Forces and to the Forces raised by Colonial Governments?

A. 1. European Officers and soldiers of the Indian Army are subject to the Act as Officers or soldiers of the Regular Forces; but natives of India, though they be tried by Courts-Martial convened under the Act, are subject to Indian Articles of War made by the Government of India. When any such Colonial Forces are serving with the Regular Forces they are, in so far as the law of the Colony has not provided, subject to the Army Act with such modifications as the General Officer Commanding the Forces may make. **ss. 177, 180, 190 (8).**

Q. 2. Explain fully the power of a Commanding Officer to award detention for the offence of absence without leave, and make clear the regulations as to the commencement and expiry of a day of detention.

A. 2. A Commanding Officer can award detention up to 21 days for absence, but if the award exceeds 168 hours he cannot award more days' detention than the numbers of days the offender has been absent. **s. 46 (4), (5).**

If awarded in *days*, the punishment commences on the day of award and expires at midnight that night; if awarded in hours it commences at the hour the man goes to the detention barrack (unless he does not go the day following the award, in

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which case it will count from that day)—and the 24 hours will end at the same hour the following day.

Q. 3. Explain how fines for drunkenness are calculated in accordance with the regulations recently amended and now in force.

A. 3. For the first offence, no fine.

For the second offence, 2s. 6d.

For the third and every subsequent offence—

If within three months of the last, 10s.

If over three, but within six, months, 7s. 6d.

If over six months, 5s.

Time during which a man is absent without leave, or in prison, or in detention, is not reckoned in the above periods. **K R., 512.**

Q. 4. As a Commanding Officer, deal with the following cases :—

Private A.—A woman states that she is his wife, and that he has deserted her.

Private B.—It is reported that at kit inspection he has been found deficient of his South African Medal.

A. 4. Private A.—Cause the woman to produce evidence of her being married to the man. If this is satisfactory—then if it is within six months of his attestation, either apply to the Secretary of State for authority to stop 6d. a day from his pay for her maintenance, or have the man tried by a Civil Court for false answer on attestation, and, if convicted, discharge him. If more than six months have elapsed since his attestation, tell the wife he can only be discharged if the parish on which she has become chargeable send a constable with a warrant for his apprehension for deserting her.

ss. 99, 145 (2) ; K.R., 390 (vii.).

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Private B.—His Company Commander will record all available evidence as to the loss and submit it to the Commanding Officer, who will give his opinion as to whether the loss was—

(i.) On duty and beyond the soldier's control.

(ii.) Accidentally.

(iii.) Wilfully.

In the two first cases the medal can be replaced at once at the soldier's expense—or in very rare cases under (i.) at the public expense; in the last case the man will be dealt with under the Army Act, s. 24. **K.R., 1754.**

Q. 5. Describe clearly the position and rights of an accused person when a summary of evidence is taken down in his presence.

A. 5. The accused can put any questions he wishes in cross-examination, which, with the answers, are taken down in writing in the summary. He may also, if he wishes, give evidence himself and call any witnesses for his defence, and may, if he wishes, make any statement in his defence, all of which is taken down in the summary. But he must be warned that any such evidence or statement may be used against him at the trial. He can if he likes reserve his defence. **R.P., 4 (C), (D), (E).**

Q. 6. A Commanding Officer remands an accused for trial by District Court-Martial. How is a full knowledge of all necessary details concerning the case conveyed to the Convening Officer and the accused?

A. 6. In the application for trial the Commanding Officer states the name of the Officer who investigated the case and the character of the accused, and a medical certificate as to his fitness to undergo punishment. With the application the following documents are forwarded to the Convening Officer :—

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(*a*) Charge Sheet (in duplicate).
(*b*) Summary of Evidence.
(*c*) Company Conduct Sheet of the accused.
(*d*) List of witnesses and their stations.
(*e*) Statement of character and service of the accused. **Man, p 604.**

The accused besides having been present when the summary was taken down is warned for trial by an Officer not less than eighteen hours before trial in the case of a Regimental Court-Martial, or twenty-four hours in the case of any other Court. He, at the same time, is given a copy of the charge sheet and summary of evidence. If he is to be jointly tried he is so informed. If it is intended to employ Counsel he is given seven days' notice, unless he has intimated that he intends having Counsel. As soon as the Officers have been detailed for the Court a list of their names is given him if he desires it. **R.P. 4 (C), 14, 15, 89 (B).**

Q. 7. Under what circumstances would the charges against an accused be entered on separate charge sheets? How is the ordinary procedure of a Court-Martial affected by charges being entered on separate sheets instead of upon a single sheet?

A. 7. Separate charge sheets are used when there are several charges against the accused, especially if the facts are complicated, or if the offences are quite distinct, or if different sets of witnesses are required to prove them. In practice not more than three or four charges should be put in the charge sheet, unless they form part of the same wrongful transaction. **R.P., 62 (A)** *and note.*

The trials upon the different charge sheets will be in such order as the Convening Officer directs. The accused is arraigned on each charge sheet separately, and the trial proceeds separately up to and inclusive of the finding; the Court then passes one sentence in respect of all the charge sheets. **R.P., 62.**

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Q. 8. With what object are irrelevant questions put to a witness in cross-examination? As President of a Court-Martial, state to what extent you would be prepared to disallow questions of this nature.

A. 8. To put a witness, who has learnt up a story, off his guard and to shake his credibility. I should use my discretion as to how far I should allow the person cross-examining to continue a series of irrelevant questions, and should not allow those to be pressed which would not affect the issue or the credit of the witness.

Man., Ch. VI., paras. 112, 113.

Q. 9. Describe the procedure when a Court-Martial acquits the accused of all the charges brought against him. In the event of the Confirming Officer disagreeing with the verdict of the Court, what course is open to him.

A. 9. The finding is read to the accused in Open Court and he is at once released, a record of this having been done being entered in the Proceedings.

s. 54 (3); R.P., 45 (A).

He cannot make any remarks in the Proceedings, but will report his opinion to the Army Council.

R.P., 51 (A); K.R., 590; A.O., $\frac{227}{08}$.

Q. 10. Under what sections of the Army Act would the following offences be charged?

(*a*) A man discharged from a Cavalry regiment as "incorrigible and worthless" enlists in an Infantry regiment.

(*b*) A soldier is found drunk in a public-house which is "out of bounds."

(*c*) A soldier trying to get out of barracks is caught in the act of climbing the barrack wall.

(*d*) A soldier groom ill-treats the charger of an officer.

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A. 10. (*a*) s. 32.

(*b*) s. 15 (3).

(*c*) If the evidence tended to show an intention to desert, under s. 12; otherwise under s. 40.

(*d*) s. 24 (5).

Q. 11. Give a brief summary of the regulations as to the treatment of a man who surrenders himself as a deserter at a military station in England.

A. 11. If a deserter surrenders to his own corps, and can be identified, or if a man dressed as a soldier surrenders, and there are grounds for believing his confession, he may be taken into military custody. In no other case can a man not serving be taken into military custody, except to be handed over to the Civil Powers to be proceeded against under Army Act, s. 154. **K R., 517.**

Q. 12. State the provisions of the Army Act which were brought in force by the Army Annual Act of 1907 as to punishments on active service.

A. 12. The regulations in s. 44 as to *summary punishment* were changed—the punishment now being called *field punishment*; the proviso that this punishment could only be awarded for certain offences was repealed and it can now be awarded for any offence on active service; the restriction as to its not being awarded to non-commissioned officers was repealed. A Court-Martial can now also order forfeiture of all ordinary pay for a period not exceeding three months for any offence.

The powers of a Commanding Officer under s. 46 have been extended to awarding field punishment for offences on active service for a period not exceeding 28 days; and forfeiture of pay for a like period. These awards cannot be made in the case of Non-commissioned Officers.

A. Ann. Act, 1907, s. 10.

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The system of arrangement is open to criticism, but, be it remembered, a vast multitude of keen intellects is appealed to, each rightly considering his own special "service" to be the most important in the Army. The Editor would wish for nothing better than to gain the confidence of the Army, and would be grateful for any well-considered suggestions for adoption in future issues of what is hoped will prove a work of reference in military matters.

September, 1908.

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